IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual, Minors T.S. and S.S., Andrew Flores, an Individual, Plaintiffs and Appellants, v. GINA AUSTIN, an individual, AUSTIN LEGAL GROUP, a Professional Corporation, Defendants and Respondents.	Court of Appeal Case No.: D081109 San Diego County Superior Court Case No.: 37-2021-0050889-CU-AT-CTL

Appeal from the Order by the Honorable James A. Mangione, Judge of the Superior Court of California, County of San Diego, Entered on February 25, 2022, Granting Defendant's/Respondent's Anti-SLAPP Motion.

APPELLANTS' OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: D081109
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 272958 NAME: Andrew Flores FIRM NAME: Law Office of Andrew Flores STREET ADDRESS: 427 C Street, Suite 220 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: 619.356.1556 FAX NO.: 619.274.8053 E-MAIL ADDRESS: afloreslaw@gmail.com ATTORNEY FOR (*name*): Amy Sherlock	SUPERIOR COURT CASE NUMBER: 37-2021-0050889-CU-AT-CTL
APPELLANT/ PETITIONER: Amy Sherlock RESPONDENT/ REAL PARTY IN INTEREST: Gina Austin et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Appellant/Plaintiff Amy Sherlock

2. a. [ ] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [X] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (*Explain*):
(1) James Crosby	Attorney for Party in underlying matter
(2) Michael Weinstein	Attorney for Party in underlying matter
(3) Finch, Thorton and Baird	Defendant Law Firm
(4) James Bartell	Defendant
(5) Bartell and Kwiatkowski	Defedant

[X] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: 1/11/2023

Andrew Flores
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Attachment -2

Bradford Harcourt- Defendant

Jessica McElfresh- Defendant

Steven Blake- Attorney for Party in underlying matter

Blake Law Firm- Mr. Blake's Law Firm

Ninus Malan- Defendant

Aaron Magagna- Defendant

Stephen Lake – Defendant

Prodigious Collectives LLC – Defendant

Natalie Trang My Nguyen- Defendant

Abhay Schweitzer- Defendant

George R Najjar- Attorney for Party in underlying matter

Gregory Brian Emdee- Attorney for Michael Weinstein in related Federal Action

Kjar McKenna & Stockalper- Law firm of Mr. Emdee

Julia Dalzell- Previous Counsel of Defendant Gina Austin and Austin Legal Group

Michelle Lynn Bains- Prior Counsel of Defendant Gina Austin and Austin Legal Group

Wilson Elser Moskowitz Edelman & Dicker LLP – Law Firm of Ms. Bains

Douglas A Pettit- Counsel for Defendant Gina Austin and Austin Legal Group

Pettit Kohn Ingrassia & Lutz PC – Law Firm of Mr. Pettit

Laura E. Stewart – Attorney for Defendant McElfresh

Walsh McKean Furcolo LLP – Law Firm of Ms. Stewart

Corrinne Bertsche – Attorney for David Demian of Finch Thornton and Baird

Lewis Brisbois Bisdaard & Smith LLP – Law firm of Ms. Bertsche

Salam Razuki - Defendant

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INTRODUCTION

Plaintiffs – attorney Andrew Flores, Amy Sherlock, and her two minor children, T.S. and S.S. (the "Sherlock Family") appeal the granting of defendants Gina M. Austin and the Austin Legal Group's (ALG) Special Motion to Strike Plaintiffs' First Amended Complaint (FAC) pursuant to Code of Civil Procedure Section 425.16 (the Anti-SLAPP Statute) (the "Motion).

The FAC alleges that Austin and ALG (collectively, "ALG") and other defendants (together with ALG, the "Enterprise") have conspired to create an unlawful monopoly in the cannabis market in the City and County of San Diego in violation of the Cartwright Act, the Unfair Competition Law (UCL), and California's and the City of San Diego's cannabis licensing laws and regulations (the "Antitrust Conspiracy").

Plaintiffs allege the Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality the attorneys conspire against some of their own non-Enterprise clients to ensure the acquisition of the limited number of cannabis permits and State of California licenses available in San Diego go to principals of the Enterprise. Plaintiffs allege that they have been damaged by acts taken by defendants in furtherance of the Antitrust Conspiracy. Specifically, that they were defrauded of ownership of cannabis permits,

licenses and businesses that were unlawfully acquired by ALG and its clients. The Enterprises defrauded Plaintiffs of their ownership rights to cannabis permits, licenses and businesses through the use of forged documents, sham litigation, and acts and threats of violence against litigants and third-party witnesses.[1]

After years of litigation before the federal and state courts, including by other parties who also allege the existence of the Enterprise and the Antitrust Conspiracy, Plaintiffs are aware of how hard it is to be believe their allegations. However, this appeal is a milestone because the only issue before this Court is whether ALG is engaging in petitioning activity, that it admits is takes, that is illegal as a matter of law. ALG admits that some of its clients have had judgments entered against them for operating illegal dispensaries (i.e., engaging in unlicensed commercial cannabis activity). And ALG admits that it has applied for cannabis permits and licenses for their sanctioned clients (principals) in the name of their clients' agents who did not disclose their agency and their respective principals ownership interests in the

[1] Plaintiffs here in this Brief focus on the illegality of the Strawman Practice. Establishment of the illegality of the Strawman Practice, and that defendants face severe civil and criminal liability in furtherance, therefore, provides clear and convincing support for Plaintiffs' claims of defendants other illegal acts taken to prevent exposure and cover up of the illegality of the Strawman Practice.

cannabis permits and licenses applied for and/or acquired (the "Strawman Practice").

Plaintiffs allege the submission of applications for cannabis permits with State and local licensing agencies via the Strawman Practice is illegal petitioning activity as a matter of law. Plaintiffs also allege that ALG's litigation petitioning activity in furtherance and defense of the Strawman Practice is also illegal petitioning activity as a matter of law.

ALG alleges the Strawman Practice and litigation based on same is not illegal as a matter of law because a "plain reading" of California Business & Professions Code § 26057, former § 19323, does not bar her clients' ownership of cannabis businesses because California's Department of Cannabis Control has "complete discretion" to grant applications. However, the subject statute provides that the DCC "shall deny" applications by parties sanctioned for "unlicensed commercial cannabis activity."

ALG's argument that it is not engaging in criminal activity is therefore contradicted by facts, the plain language of the law, and basic common sense. First, State and City cannabis licensing laws, regulations and public policies require the disclosure of all parties with an ownership interest in cannabis permits/licenses applied for so that applicants can go undergo criminal background checks. Background checks specifically required to prevent certain parties from engaging in commercial cannabis activities. ALG has

not and cannot explain how its clients can lawfully own regulated cannabis permits or licenses issued in the name of third parties.

Second, and the reason ALG undertakes the Strawman Practice in the first place on behalf of its clients, contrary to ALG's argument, the "plain language" of California's cannabis licensing statute does bar her clients' ownership of cannabis businesses. ALG's clients secret owning of cannabis businesses and "***engaging in unlicensed commercial cannabis activity is a crime***." (*Wheeler v. Appellate Div. of Superior Court* (2021) 72 Cal. App. 5th 824, 833 (citing BPC § 26038(c) (emphasis added).)

The gravamen of Plaintiffs' complaint and this appeal is absurdly simple because ALG's petitioning activity is so clearly criminal. Geraci and Razuki made a lot of money operating illegal dispensaries. They were caught and had judgments entered against them for operating illegal dispensaries. In order to operate legal dispensaries and other cannabis businesses and make money, they hired ALG who knowingly and purposefully aided and abetted them in acquiring ownership interests in cannabis businesses via the Strawman Practice.

In other words, the object of ALG's legal services agreement to further her clients' goals of illegally owning and operating cannabis business, which they cannot legally own, is criminal and not protected petitioning activity.

The trial court's ruling granting the Motion holding the ALG's petitioning activity is not illegal as a matter of law is error.

The ruling must be reversed and vacated - not just to vindicate Plaintiffs' rights, but as a public policy issue. The Strawman Practice is a criminal practice and on its face evidence of violations of the Cartwright Act, the UCL and California's cannabis licensing laws and regulations. Laws that were enacted to protect the public and whose ongoing violations represent an issue of grave public concern.

And, establishment of the illegality of the Strawman Practice is material and compelling evidence that Plaintiffs' allegations of the existence of the Enterprise and the Antitrust Conspiracy. The civil and criminal liability to ALG, its clients, and their joint tortfeasors is career and life ending. As any reasonable person would understand, the desire to avoid liability of such magnitude is more than sufficient motive to take the alleged acts and threats of violence that Plaintiffs allege against them.

APPEALABILITY

An order denying a special motion to strike is appealable. (Code Civ. Proc., § 425.16(i); Code Civ. Proc., § 904.1(a)(13).) The trial court entered the order granting the Motion on August 12, 2022. (Appellants' Appendix (AA) 253.) The Notice of Appeal was timely filed on August 23, 2022 (AA 256-259); Code Civ. Proc., § 904.1(a) (13).)

STANDARD OF REVIEW

The standard of review of a ruling on an anti-SLAPP motion is de novo. (*Richmond Compassionate Care Collective v. 7 Stars Holistic Found. Inc.* (2019) 32 Cal. App. 5th 458, 467 (*Richmond*).)

MATERIAL FACTUAL AND PROCEDURAL HISTORY

A. Lawrence Geraci and Salam Razuki are sanctioned for engaging in unlicensed commercial cannabis activities.

On October 27, 2014, Geraci was sanctioned by the City of San Diego for operating an illegal dispensary - unlicensed commercial cannabis activity - in *City of San Diego v. The Tree Club Cooperative, Inc. et al.*, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgement"). (AA 008.)

On June 17, 2015, Geraci was sanctioned by the City of San Diego for operating an illegal dispensary - unlicensed commercial cannabis activity - in *City of San Diego v. CCSquared Wellness Cooperative, et al.*, Case No. 37-2015-00004430-CU-MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgment, the "Geraci Judgments"). (AA 008.)

On April 15, 2015, Razuki was sanctioned for operating an illegal dispensary - unlicensed commercial cannabis activity - in *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the "Stonecrest Judgment"). (AA 008.)

B. ALG's admissions that it has undertaken petitioning activity for Geraci and Razuki ownership of cannabis businesses via the Strawman Practice.

In July 2018, Razuki filed suit against, among others, Malan alleging a 60% ownership interest in $40,000,000 in cannabis assets acquired in the name of Malan via the Strawman Practice (*Razuki I*). (*See* Request for Judicial Notice (RJN) Ex. 1 (*Salam Razuki v. Ninus Malan*, No. D075028, 2021 Cal. App. Unpub. LEXIS 1168, at *3-4 (Feb. 24, 2021) (the "*Razuki Decision*").)

On July 30, 2018, Austin submitted a declaration in *Razuki I* opposing the appointment of a receiver, Mr. Essary. (RJN Ex. 2 (Declaration of Gina Austin).) Materially, Austin's declaration states:

> I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior Court.
> ….
> Allowing Mr. Essary to control the dispensary is a violation of State law. The Bureau of Cannabis Control ("BCC") requires all owners to submit detailed information to the BCC as part of the licensing process. An owner is defined as:
>
> > (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
> > (2) The chief executive officer of a nonprofit or other entity.
> > (3) A member of the board of directors of a nonprofit.

> (4) ***An individual who will be participating in the direction, control, or management of the person applying for a license*** [emphasis added].
>
> Cal. Bus. Prof Code § 26001(al).
>
> Based upon the definition of an Owner, Mr. Essary would be deemed by the BCC to be an owner and would have to submit all the requisite information required by Title 16 Chapter 42 of the California Code of Regulations before he would be allowed to legally take possession and control of the Balboa dispensary.

(RJN Ex. 2 at ¶ 2-3, 14-16 (emphasis in original).)

On July 8, 2019, Austin testified in the trial of *Geraci v. Cotton* (Case No. 37-2017-00010073). (*See* RJN Ex. 3.) Austin testified that she did not know why Geraci was not disclosed in the application for a cannabis permit with the City of San Diego that he applied for in the name of his assistant, Rebecca Berry (the "Berry Application"); that she was not aware that Geraci had been sanctioned in the Geraci Judgments for operating illegal dispensaries; and that Geraci was not required to be disclosed in the Berry Application. (*Id.* at 49:15-50:28; *see* AA 061 (Declaration of Lawrence Geraci stating: "***The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf***.") (emphasis added).)

C. The First Amended Complaint.

On December 22, 2021, Plaintiffs filed the FAC. (*See* AA 0002.) The FAC alleges the existence of the Enterprise and the Antitrust Conspiracy.

(*See* AA 0003, 0035-0036.) Further, that

> [t]he defining illegal act of the Enterprise is the acquisition of [cannabis permits] for its principals through the use of proxies - who do not disclose the principals as the true owners of the CUP applied for and acquired - in order to avoid disclosure laws that would mandate their applications be denied because of the principals' prior sanctions (the "[Strawman] Practice").
>
> The unlawful acts taken by the Enterprise in furtherance of the Antitrust Conspiracy include "sham" litigation and acts and threats of violence against potential competitors and witnesses.
>
> Plaintiffs had or would have had interests in [cannabis permits] issued in the City and County of San Diego but-for the illegal acts of the Enterprise that were taken in furtherance of the Antitrust Conspiracy.

(AA at 0003.)

The FAC alleges that Austin aided Geraci and Razuki "apply, acquire and/or maintain ownership interests in [cannabis permits] without disclosing all parties with an ownership interest in the [cannabis permits] in violation of numerous State and City laws, including BPC §§ 19323, 20657, [San Diego Municipal Code] § 11.0401(b) and Penal Code § 115." (AA 0008-0009.)

D. ALG's Motion.

On June 16, 2022, ALG filed the Motion. (AA 0100-0216.) The Motion argues the Strawman Practice is not illegal as a matter of law as follows:

> Plaintiffs allege that Austin's "[Strawman] Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq." (FAC, ¶ 314.) Business and Professions Code section 26057, formerly section 19323,

> states the licensing authority "***shall deny*** an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division." (Bus. & Prof. Code, § 26057.) The statute goes on to list specific conditions that may constitute grounds for denial of licensure or renewal. (Ibid, emphasis added.)
>
> Plaintiffs' entire argument backing their "[Strawman] Practice" allegation rests on their asserted fact that Geraci and Razuki were ineligible to own a cannabis license or CUP ***due to previously being sanctioned for unlicensed commercial cannabis activities.*** What Plaintiffs' do not mention is that although this type of sanction could be grounds for denial, section 26057 allows the licensing authority to decide based on all the circumstances. A plain reading of the statute shows there is no one condition that constitutes an automatic, outright denial. The statute gives the licensing authority complete discretion to weigh factors and decide what may constitute grounds for denial.
>
> Further, it is unclear as to how Austin could be implicated for violation of this statute as it does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow when reviewing applications for cannabis licenses and [local permits]. Austin takes no part in reviewing, approving or denying such applications.

(AA 0118-0119 (emphasis added).)

E. Plaintiffs' Opposition to the Motion.

On July 25, 2022, Plaintiffs filed their opposition. (*See* AA 0218.)

Materially, Plaintiffs argued that:

> [ALG's] interpretation of BPC §§ 19323/26057 fails for two obvious reasons, the first one requires no legal education or knowledge, just basic common sense. First, even by the Austin Legal Group's own reasoning, the Department of Cannabis Control must apply the alleged permissive criteria in the statues to determine whether to approve or deny a license. But how is the Department of Cannabis Control supposed to apply the

> alleged permissive criteria to Geraci, Razuki and the Austin Legal Group's other clients - to meet the Legislative mandate that it issue "state licenses only to qualified applicants" - when they are not disclosed? (BPC §§ 19320(a), 26055(a).) They can't. It is impossible. As a matter of common sense and by the Austin Legal Group's own reasoning, the illegality of the Proxy Practice is clear – a regulated license can't be lawfully issued to a party that is not disclosed in the application to the agency charged with issuing the license.

(AA 0230-0231.)

Second, Plaintiffs argued that the plain "shall deny" language of BPC §§ 19323/20657 does bar the ownership of cannabis businesses by Razuki and Malan. (AA 0231.)

F. ALG's Reply.

On July 29, 2022, ALG filed its reply. (AA 0243.) Nowhere in its reply did ALG address the plain "shall deny" language of BPC § 20657 or how Geraci/Razuki can own a license issued by the DCC when they never applied as argued in Plaintiffs' opposition. (*See, gen.*, AA 0243-0251.) However, ALG did argue that Plaintiffs did not submit any evidence in support of their opposition and thus could not prevail on the merits of their claim. (AA 0248.)

G. The Trial Court's Ruling and Notice of Appeal.

On August 12, 2022, the trial court entered its order finding the Strawman Practice is not illegal as a matter of law. (AA 0253-0254.) And that Plaintiffs presented no evidence in support of their opposition to the

motion; thereby impliedly finding that Plaintiffs could not use ALG's own admissions in its Motion and supporting documents to undertaking the Strawman Practice as evidence that ALG does undertake the Strawman Practice. (*Id.*) Plaintiffs then filed their Notice of Appeal on September 1, 2022. (AA 0256-0259.)

ARGUMENT

A. The anti-SLAPP statute is directed to "claims" arising from protected activities.

> A two-step process is used for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity, that is, by demonstrating that the facts underlying the plaintiff's complaint fit one of the categories spelled out in section 425.16, subdivision (e). If the court finds that such a showing has been made, it must then determine the second step, whether the plaintiff has demonstrated a probability of prevailing on the claim.

Richmond, 32 Cal. App. 5th at 466-67 (cleaned up).

However, in *Flatley*, the California Supreme Court held that petitioning activity is not protected by the anti-SLAPP statute if "the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law." *Flatley v. Mauro* (2006) 39 Cal.4th 299, 317.

"[A] trial court may *grant* an anti-SLAPP motion—i.e., strike a claim—only if it finds, after applying *both* steps of the analysis, that the claim is based on protected activity *and* lacks minimal merit. But a trial court must

deny an anti-SLAPP motion—i.e., allow the claim to proceed—if it finds, after applying either step of the analysis, that the claim is not based on protected activity or has at least minimal merit." (*Golden Gate Land Holdings LLC v. Direct Action Everywhere* (2022) 81 Cal. App. 5th 82, 89 (Golden Gate) (emphasis in original).

B. The Strawman Practice – filing applications with State and City cannabis licensing agencies with false and fraudulent information – is illegal as a matter of law.

1. Perjury and False Documents Liability.

Penal Code § .204 "provides that the offense of perjury is committed by a person who declares under penalty of perjury 'and willfully states as true any material matter which he or she knows to be false.'" (*People v. Feinberg* (1997) 51 Cal. App. 4th 1566, 1578.

"Penal Code section 115… makes it a felony to knowingly procure or offer any false or forged instrument for filing in a public office." (*People ex rel. Harris v. Aguayo* (2017) 11 Cal. App. 5th 1150, 1166.

ALG does not dispute that Berry and Malan did not disclose, respectively, Geraci and Razuki's ownership interests in the permits/licenses applied for under penalty of perjury. In the case of Berry, that Geraci was the sole and true proposed beneficial owner of the CUP applied for. These acts – facts – are not disputed. Per Austin's own declaration, Geraci and Razuki were required to be disclosed as "Owners" pursuant to the DCC's

regulations. (*See* RJN Ex. 2 at ¶ 2-3, 14-16*;* BPC § 26001.)

The truth is clear. ALG and its clients have engaged in the unlawful acquisition of cannabis businesses. But-for the dispute between Razuki and Malan, their unlawful agreement would never have been publicly disclosed.

The Strawman Practice is *intended* to acquire *illegal* ownership of cannabis businesses that can *only* be effectuated through perjured statements and the recording of false documents with government agencies. The trial court erred finding ALG's Strawman Practice does not constitute petitioning activity that is illegal as a matter of law.

2. Tax Fraud and Evasion

California law prohibits nonprofit medical cannabis entities from operating for profit. As set forth in Cal. Health & Safety Code § 11362.765(a), "… nor shall anything in this section authorize any individual or group to cultivate or distribute cannabis *for profit*." (Emphasis added.)

"The elements of tax evasion are the existence of a tax deficiency, willfulness, and an affirmative act constituting an evasion or attempted evasion of the tax. As this Court's decisions indicate, the evasion of taxes involves deceit or fraud upon the Government, achieved by concealing a tax liability or misleading the Government as to the extent of the liability. (*Kawashima v. Holder* (2012) 565 U.S. 478, 492-93 (cleaned up).)

As this Court stated in the Razuki Decision, the agreement between

Razuki and Malan was entered into before *for-profit* commercial cannabis activity was allowed. (*See* RJN 1 at p. 3.) This Court found the agreement between the parties was not illegal for engaging in commercial cannabis activities because "[a]t the time the contract was entered, business related to the provision of medical marijuana was lawful and not against this state's public policy." (*Razuki Decision* at *58.)

However, the agreement between Razuki and Malan to operate medical cannabis nonprofits "for profit" did violate Cal. Health & Safety Code § 11362.765(a). Razuki and Malan's agreement to own cannabis businesses in the name of Malan and to distribute profits is an admission of engaging in unlawful prohibited behavior.

Further, there was and is no lawful manner for Razuki or Malan (or Geraci and Berry) to have reported their respective *profit* distributions from their *nonprofit* medical cannabis operations. It is well known that dispensaries are lucrative and a cash business. What is evident, and could be proven with Razuki and Malan's tax returns, is that they operated a nonprofit entity in violation of the law for profit, did not report their "profit" distributions as income, and necessarily submitted fraudulent tax returns and engaged in tax evasion.

C. The plain language of BPC §§ 19323/26057 – "shall deny" - establishes that litigation in furtherance of the Strawman Practice is illegal petitioning activity and not protected by the anti-SLAPP statute.

> California law requires a state license for commercial cannabis activity. (Bus. & Prof. Code, §§ 26038 [civil penalties for engaging in commercial cannabis activity without a license]; 26053 [license required for all commercial cannabis activity].) "Commercial cannabis activity" (both medical and non-medical) includes "the cultivation, possession, . . . processing, [or sale] . . . of cannabis and cannabis products as provided for in this division." (Bus. & Prof. Code § 26001, subds. (k), (ae)-(af).) Cities and counties are authorized to adopt local laws regulating cannabis. (Bus. & Prof. Code, § 26200.) ***Commercial cannabis activity is unlawful without a state license and (where required) a local permit***. (Bus. & Prof. Code, §§ 26032, subd. (a)(1)-(2), 26038; see also Bus. & Prof. Code § 26055, subd. (d).)

Lang v. Petaluma Hills Farm, No. A156614, 2020 Cal. App. Unpub. LEXIS 7702, at *1-2 (Nov. 20, 2020) (emphasis added). This Court itself noted in its *Razuki Decision* that, "The [state cannabis] licenses were required under state laws that closely regulate cannabis businesses. (*Razuki Decision* at *7 n.3.)

As noted by ALG in its Motion, BPC § 26057, former § 19323, provides that:

> The [Department of Cannabis Control] ***shall deny*** an application if the applicant… has been sanctioned by… a city… for unauthorized commercial cannabis activities… in the three years immediately preceding the date the application is filed with the department.

BPC § 26057(a), (b)(7) (emphasis added).

"When, as here, statutory language is clear and unambiguous there is no need for construction, and courts should not indulge in it." (*Cal. Fed. Sav. & Loan Ass'n v. City of L.A.* (1995) 11 Cal. 4th 342, 349.) In *Bostock*, the

United States Supreme Court recently emphasized the need for the plain language of a statute to control: "This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are ***entitled*** to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration." (*Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1749 (emphasis added); *id*. at 1737.)

Plaintiffs have relied on the plain "shall deny" language of BPC §§ 19323/26057 mandating the DCC deny applications by sanctioned applicants to prove that the Strawman Practice is illegal. That it is an illegal practice taken in furtherance of Plaintiffs' alleged Antitrust Conspiracy pursuant to which they were deprived of their ownership interests in cannabis businesses. Plaintiffs are *entitled* to rely on the plain language of the law.

ALG's arguments that "shall deny" means the DCC has "complete discretion" in denying an application by a party like Geraci or Razuki is without any factual or legal justification. The secret, undisclosed ownership of cannabis businesses by sanctioned parties is "***engaging in unlicensed commercial cannabis activity [and] is a crime***." (*Wheeler*, 72 Cal. App. 5th at 833 (citing BPC § 0(c).)

The trial court erred. It would legal for ALG to have applied for Geraci had they disclosed his ownership interests and sanctions as required by law.

But litigation petitioning activity in furtherance of secret, illegal ownership of cannabis businesses is illegal as a matter of law.

D. The trial court erred implying finding that Plaintiffs presented no evidence that ALG undertakes the Strawman Practice.

The trial court erred impliedly holding that Strawman Practice is not illegal in the second step of the anti-SLAPP analysis for at least three reasons.

First, the anti-SLAPP statute provides: "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Cal. Civ. Proc. Code § 425.16(b)(2).) Plaintiffs' FAC and ALG's Motion and supporting documents did not dispute and admitted that ALG undertakes the Strawman Practice. Plaintiffs' opposition to the Motion did not need to argue or provide evidence in support of a fact that was admitted to and conceded in ALG's Motion, raised for the first time in their reply, and which Plaintiffs could rely upon in making their arguments in their opposition pursuant to the anti-SLAPP statute itself. (*See, e.g., Lester v. Lennane* (2000) 84 Cal.App.4th 536, 595 (contentions raised for the first time in a reply are deemed waived).)

Second, as demonstrated above, the Strawman Practice, and litigation in furtherance thereof, is illegal as a matter of law. Thus, the trial court was required to deny the Motion in the first step of the anti-SLAPP analysis. (*Golden Gate*, 81 Cal. App. 5th at 89 ("But a trial court must *deny* an anti-SLAPP motion—i.e., allow the claim to proceed—if it finds, after applying

either step of the analysis, that the claim is not based on protected activity or has at least minimal merit.") (emphasis in original).)

Third, when it comes to illegal contracts, under California law:

> Whatever the state of the pleadings, when the evidence shows that the plaintiff in substance seeks to enforce an illegal contract or recover compensation for an illegal act, the court has both the power and ***duty to ascertain the true facts*** in order that it may not unwittingly lend its assistance to the consummation or encouragement of what public policy forbids. It is immaterial that the parties, whether by inadvertence or consent, even at the trial do not raise the issue. The court may do so of its own motion when the testimony produces evidence of illegality, in a proceeding to enforce an arbitration award, or even on appeal.

Lewis & Queen v. N. M. Ball Sons (1957) 48 Cal. 2d 141, 147-48 (citations omitted).

Thus, whatever errors Plaintiffs' counsel may have committed, when it comes to litigants seeking to enforce illegal contracts and be compensated for criminal activity, or to avoid liability for criminal activity, the trial court had a "duty to ascertain the true facts." (*Id.*)

However, if such was error, then Plaintiffs respectfully submit that the trial testimony, declaration of Austin, and this Court's own Razuki Decision submitted in the RJN in support of this appeal do establish that Austin did undertake the Strawman Practice for Geraci and Malan and that she knowingly did so to aid her clients to engage in unlicensed commercial cannabis activity, which is a crime.

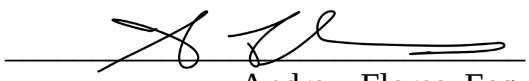
Alternatively, Plaintiffs' counsel requests that if such error is truly meriting the loss of Plaintiffs' claims against defendants, that it only punish Flores and not the Sherlock Family in whatever manner this Court deems just. At the very least, Flores requests leave for the Sherlock Family to acquire alternate counsel to aid them in seeking to prove their claims and vindicate their rights.

CONCLUSION

ALG's petitioning activity is illegal as a matter of law. The Strawman Practice cannot be effectuated without violating numerous civil and penal statutes. The object of the Strawman Practice is *criminal* activity – unlicensed commercial cannabis activity.

Plaintiffs' respectfully request that the Court reverse the trial court's order granting ALG's Motion. Further, respectfully, that this Court grant any further relief that it deems just and appropriate given the facts admitted to by ALG. ALG's own admissions prove that ALG and its clients have deceived the judiciaries, including this Court, into ratifying their criminal schemes for years via the justice system.

Dated: January 11, 2023



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In Pro Se, and Attorney for Plaintiffs and
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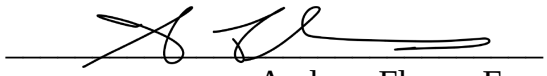
T.S. and S.S

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.204(c)(1), Appellant's Opening Brief was produced using 13-point Times New Roman type style and contains **4,744** words not including the table of contents and authorities, caption page, or this Certificate, as counted by the word processing program used to generate it.

Dated: January 11, 2023



Andrew Flores, Esq.
In Pro Se, and Attorney for Plaintiffs and Appellants
Amy Sherlock, and Minors T.S. and S.S

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual, Minors T.S. and S.S., Andrew Flores, an Individual, Plaintiffs and Appellants, v. GINA AUSTIN, an individual, Austin Legal Group, a Professional Corporation, Defendants and Respondents. .	Court of Appeal Case No.: D081109 San Diego County Superior Court Case No.: 37-2021-0050889-CU-AT-CTL

Appeal from the Order by the Honorable James A. Mangione, Judge of the Superior Court of California, County of San Diego, Entered on August 12, 2022 Granting Defendant's/Respondent's Anti-SLAPP Motion.

APPELLANTS' REQUEST FOR JUDICAL NOTICE

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EXHIBIT LIST

RJN EXHBIT NUMBER	DOCUMENT NAME	DATE
1	Razuki v. Malan D075028 Unpublished Opinion	February 23, 2021
2	Declaration of Gina M. Austin	July 30, 2018
3	Reporter's Transcript	July 17, 2018

RJN EXHIBIT 1

Salam Razuki v. Ninus Malan

Court of Appeal of California, Fourth Appellate District, Division One

February 24, 2021, Opinion Filed

D075028

Reporter
2021 Cal. App. Unpub. LEXIS 1168 *; 2021 WL 715002

SALAM RAZUKI, Plaintiff and Respondent, v. NINUS MALAN et al., Defendants and Appellants.

Notice: NOT TO BE PUBLISHED IN OFFICIAL REPORTS. *CALIFORNIA RULES OF COURT, RULE 8.1115(a)*, PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY *RULE 8.1115(b)*. THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF *RULE 8.1115*.

Prior History: [*1] APPEAL from an order of the Superior Court of San Diego County, No. 37-2018-000034229-CU-BC-CTL, Eddie C. Sturgeon, Judge.

Disposition: Affirmed.

Counsel: G10 Galuppo Law, Daniel T. Watts and Louis A. Galuppo; Noonan Lance Boyer & Banach, James R. Lance and Genevieve M. Ruch for Defendants and Appellants Ninus Malan, San Diego United Holdings Group, LLC, Flip Management, LLC, Balboa Ave Cooperative, California Cannabis Group, and Devilish Delights, Inc.

Goria, Weber & Jarvis and Charles F. Goria for Defendants and Appellants Chris Hakim, Mira Este Properties, LLC, and Roselle Properties, LLC.

Law Offices of Steven A. Elia, Steven A. Elia, Maura Griffin and James Joseph; Williams Iagmin and Jon R. Williams for Plaintiff and Respondent.

Judges: HALLER, J.; HUFFMAN, Acting P. J., GUERRERO, J. concurred.

Opinion by: HALLER, J.

Opinion

Defendants Ninus Malan and Chris Hakim (and related entities) appeal from an order imposing a receivership over two cannabis businesses: a retail dispensary and a production facility. The trial court imposed the receivership after Salam Razuki sued the defendants, alleging he had interests in the businesses and defendants were diverting money owed to him. The manager of the cannabis businesses, SoCal Building Ventures, **[*2]** LLC (SoCal), intervened in the lawsuit and also requested the receivership. The court imposed the receivership pending the resolution of the many disputes among the parties in the litigation.

Defendants assert numerous challenges to the court's receivership order. We determine the court acted within its broad discretion and its legal rulings were supported by applicable law. We thus affirm.

OVERVIEW

The proceedings leading to the receivership followed a chaotic and procedurally confusing path before three different trial court judges, and involved thousands of pages of conflicting documentation about the parties' activities and their investments in the real property where these all-cash businesses operated. The allegations included accusations that money and equipment had been stolen from the businesses and claims that Malan's counsel and the receiver had committed malfeasance.

Razuki and Malan's business relationship began with commercial real estate investments in 2009, and eventually expanded into several cannabis businesses. By 2017, however, the relationship was strained, and they entered into a settlement agreement to clarify their ownership of and rights to the expected profits **[*3]** from three cannabis businesses: (1) A retail dispensary located on Balboa Avenue (Dispensary); (2) a

production facility located on Mira Este Court (Production Facility); and (3) a planned cannabis cultivation facility to be located on Roselle Street (Planned Facility). Malan owned the entity that held title to the Dispensary property, and Malan and Hakim both owned shares in the entities that held title to the Production and Planned Facilities properties. Razuki claimed interests in these businesses through his relationship with Malan.

After the settlement agreement, Malan and Hakim contracted with SoCal to manage the Dispensary and the Production Facility. This contract provided SoCal with options to purchase interests in the businesses. In May 2018, Razuki learned from SoCal that Malan had allegedly failed to disclose profits to him, and SoCal learned that Razuki claimed an interest in the Dispensary and Production Facility properties and/or businesses. After SoCal questioned Malan and Hakim's rights to option the properties, they unilaterally terminated SoCal's management agreements and locked SoCal out of both facilities.

Two months later, Razuki filed the complaint against Malan, **[*4]** Hakim, and numerous entities formed to operate the three cannabis businesses (detailed below). Within days, Razuki brought an ex parte application requesting the appointment of a receiver over the three businesses and SoCal filed an ex parte request to file a complaint in intervention against the same defendants. SoCal also joined Razuki's request for a receiver. These filings opened two months of intense litigation concerning the appointment of a receiver, generated thousands of pages of briefing, declarations, and exhibits, and resulted in five hearings before three different judges: Judge Kenneth Medel (who initially appointed the receiver and was peremptorily challenged); Judge Richard Strauss (who vacated the receiver and was peremptorily challenged); and Judge Eddie Sturgeon (who appointed the receiver in the challenged order).

After the matter was assigned to Judge Sturgeon, the parties filed voluminous documentation describing wildly different versions of events and competing theories of ownership of the businesses. Judge Sturgeon reinstated the receiver temporarily over the Dispensary and Production Facility, but not the Planned Facility, and set another hearing to confirm **[*5]** the appointment. By the time of that hearing, the court had before it evidence showing Razuki's significant investment into the businesses at issue; multiple competing claims on the ownership of the assets; at least one separate pending lawsuit to quiet title over the Dispensary; and allegations that Malan and his counsel had directed Dispensary employees to abscond with thousands of dollars in cash after Judge Medel's initial order appointing the receiver. After an extensive hearing, on September 26, 2018, Judge Sturgeon ordered the receiver to remain in place for an additional 60 days. Malan and Hakim (and related entities) now appeal from this order.[1]

Malan contends (1) technical errors in the procedure for the appointment of the receiver require reversal; and (2) his 2017 settlement agreement with Razuki is unenforceable as against public policy because its subject matter, the sale of cannabis, was unlawful when the agreement was made. Malan and Hakim both assert (1) the unclean hands doctrine precludes the equitable receivership remedy; (2) Razuki lacked standing under the receivership statute to pursue his claims; and (3) appointment of the receiver must be reversed because Razuki **[*6]** failed to show a probable right of possession of the assets, that the balance of harms supported the appointment of a receiver, or that a less drastic remedy was not available. Hakim's arguments concern only the appointment of the receiver over the Production Facility because he claims no ownership interest in the Dispensary.

As we shall explain, the trial court's discretion to appoint a receiver at this preliminary stage of litigation is broad, and to "justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power." (*Maggiora v. Palo Alto Inn, Inc. (1967) 249 Cal.App.2d 706, 711, 57 Cal. Rptr. 787* (*Maggiora*).) Applying this standard, we reject appellants' arguments that the trial court abused its discretion. We also determine appellants' other contentions lack merit and affirm the receiver appointment.

FACTUAL AND PROCEDURAL BACKGROUND

The contours of the relationship between Malan and Razuki are not clearly spelled out in the record before

[1] On November 16, 2018, after the notices of appeal were filed and before any briefing, federal officers arrested Razuki for plotting to hire a hitman to kidnap and murder Malan in Mexico to put an end to this litigation. At the time of the briefing, Razuki awaited trial on federal charges of conspiracy to murder and kidnap Malan. As explained below, these facts occurred after the challenged September 26 receivership order and thus are not before us in deciding the propriety of this order. But these facts would be relevant to any further court orders in this case.

this court. Their declarations show the business relationship began around 2009 and that Razuki initially hired Malan to manage his struggling Chula Vista commercial shopping center, followed shortly after by another commercial property. Malan excelled in this role, and Razuki brought **[*7]** him into his real estate investment business, partnering with Malan on the purchase, sale, and rental of commercial properties.

Eventually, the two became partners in the cannabis businesses which ultimately led to this litigation among Razuki, Malan, Hakim, and the various entities. The proceedings leading to the receiver appointment were lengthy and factually disputed. To properly evaluate the appellate contentions, we describe in some detail the facts and procedure leading to the appointment.

A. Allegations in Razuki's First Amended Complaint

On July 13, 2018, three days after filing his initial complaint, Razuki filed an amended complaint against Malan and Hakim and the various entities owned or controlled by them. These entities fall into three categories: (1) the entities holding title to the property where each of the three marijuana businesses was located[2]; (2) entities created to hold title to the required state licenses for each business[3]; and (3) the entities created to serve as the operating entity for all the cannabis operations (Flip Management, LLC (Flip) and Monarch Management Consulting (Monarch). These three category of entities will be collectively referred to as the **[*8]** Related Entities. The first category entities will be referred as the Property Owner entities.

In the amended complaint, Razuki alleged that when he and Malan decided to enter the cannabis industry as partners, they had an oral agreement that "Razuki would provide the initial cash investment to purchase a certain asset while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, he would be entitled to seventy-five percent (75%) of the profits & losses of that particular asset and Malan would be entitled to twenty-five percent (25%) of said profits & losses."

According to the complaint, the oral agreement between Razuki and Malan faltered in early 2017, when the entity that held property ownership of the Production Facility (Mira Este) required additional capital for renovations. Malan was able to secure a $1.08 million loan based in part on Razuki's personal guarantee and real property collateral. According to Razuki, however, the proceeds of the loan were not used on improvements to this property, but were instead taken by Malan and Hakim for their personal use.

On November 9, 2017, Razuki and Malan entered into a written agreement **[*9]** to settle their interests titled "Agreement of Compromise, Settlement, and Mutual Release" (Settlement Agreement). The Settlement Agreement required the transfer of the partnership assets to a new entity, RM Property Holdings, LLC (RM Property). The agreement describes the partnership assets as consisting of various portions of the three Property Owner entities and Flip, and Razuki's minority interests in two additional assets (Sunrise Property Investments, LLC (Sunrise) and Super 5 Consulting Group, LLC (Super 5)). The Agreement states Razuki and Malan "hereby reaffirm and acknowledge the terms of the Operating Agreement [for RM Property] provide for the repayment of the Partner's Cash Investment prior to any distribution of profits and losses. The Parties further reaffirm that once the partner's cash contribution has been repaid by the Company, then Razuki shall receive [75%] of the profits and losses of the Company and Malan shall receive [25%], all as set forth under the terms of the Operating Agreement."

Under the Settlement Agreement, Razuki and Malan had 30 days to make their best efforts to transfer these assets to RM Property and to perform an accounting of their cash investments **[*10]** in those assets. Razuki alleges that Malan asked for additional time to perform the accounting and also contracted with SoCal to serve as the operator for the cannabis operations at the Dispensary, the Production Facility, and the Planned Facility.

The SoCal management agreements gave SoCal the

[2] These entities are (1) San Diego United Holding Group, LLC (SD United), property owner of the Dispensary location; (2) Mira Este Properties, LLC (Mira Este), property owner of the Production Facility location; and (3) Roselle Property, property owner of the Planned Facility location. Malan was the sole owner of SD United, and Malan and Hakim held equal interests in the other two property-owning entities.

[3] These entities are Balboa Ave Cooperative (Balboa Co-Op) for the Dispensary; California Cannabis Group (CCG) for the Production Facility; and Devilish Delights, Inc. (Devilish) for the Planned Facility. The licenses were required under state laws that closely regulate cannabis businesses. (See *Bus. & Prof. Code, § 26000 et seq.*) Cities and counties also regulate these businesses through their land use and police powers, including through conditional use permits (CUP). (See *id.*, *§ 26200, subd. (a)(1)*.)

right to retain all revenue from the businesses in exchange for a guaranteed monthly payment to Monarch (formed to serve as an operating entity for all cannabis operations). Razuki alleged that although the agreements required payment to Monarch, Malan did not disclose the existence of Monarch to Razuki. Instead Malan told Razuki that SoCal's monthly payments would be deposited into accounts of Flip (the other operating entity) or the Property Owner entities. Also allegedly unknown to Razuki, the management agreements gave SoCal an option to purchase a 50 percent interest in each of the Property Owner entities.

In January 2018, Malan notified Razuki that he was close to completing the sale of the three Property Owner entities to SoCal and that transferring the assets to RM Property, as required by the Settlement Agreement, would unnecessarily complicate the sale. From January to May 2018, Malan **[*11]** represented he was continuing to negotiate the sale of the Property Owner entities to SoCal and that Razuki would receive 75 percent of Malan's share of the sale proceeds. During this time, Razuki asked for an accounting of the businesses and Malan told him none of the operations were profitable.

Then, in the second week of May 2018, Razuki met with SoCal's principal, Dean Bornstein. Bornstein told Razuki that SoCal had been making monthly payments to Monarch and that the Dispensary and the Production Facility were both profitable. As a result of this conversation, Razuki believed Malan was hiding profits and trying to eliminate Razuki from the businesses. After the meeting, SoCal also became suspicious of Malan and Hakim because SoCal was previously unaware of Razuki's claimed interest in the properties. As a result, SoCal sent a letter to Malan requesting confirmation of his ownership of the three Property Owner entities, and also indicating that SoCal wished to exercise its purchase options.

On July 9, Malan allegedly withdrew $24,028.93 from RM Property's bank account that had been deposited by Razuki, changed the locks at the Dispensary, and changed passwords for the Dispensary's **[*12]** security systems. During the next two days, Malan and Hakim terminated SoCal's management agreements, renamed the Dispensary, and told employees there was new management.

Based on these factual allegations, Razuki asserted numerous causes of action against Malan, Hakim and the Related Entities. These claims included: breach of the Settlement Agreement, the oral agreement, and the good faith implied covenant against Malan; breach of fiduciary duty against Malan, Hakim, and Monarch; fraud against Malan; money had and received against Flip and the Property Owner entities; conversion against Malan, Hakim, and Monarch; an accounting claim against Malan and Hakim; appointment of a receiver against all defendants; injunctive relief to prevent all defendants from selling, transferring, or conveying any asset or property; declaratory relief against Malan; constructive trust against Malan and Monarch; dissolution of RM Property; intentional interference with prospective economic advantage against Malan, Hakim, and the entities holding licenses; and intentional interference with a contractual relationship against Hakim and Monarch.

B. Razuki's Application for Receiver Appointment and SoCal's Application [*13] to File Complaint In Intervention

Three days after the amended complaint was filed, on July 16, Razuki filed his ex parte application for the appointment of receiver and preliminary injunction. The application sought the appointment of Michael Essary as receiver to take possession of the assets of RM Property, and each of the Related Entities.

The same day, SoCal filed an ex parte application to file a complaint in intervention. The proposed complaint named the same defendants, repeated many of the same allegations, and also sought the appointment of a receiver over the Related Entities. SoCal alleged defendants had concealed the existence of Razuki's ownership interest in the three facilities, and defendants had violated the management agreements.

According to SoCal's complaint, after SoCal learned of Razuki's interest and questioned Malan and Hakim, Malan informed SoCal that defendants' ownership of the Dispensary was also disputed in a separate pending case in San Diego Superior Court. SoCal responded with a request that defendants sign a tolling agreement to suspend the option deadlines, but also expressed hope the relationship could be salvaged.

On July 10 (the day Razuki filed his **[*14]** initial complaint), defendants' counsel sent a letter to SoCal terminating the three management agreements, and asserting SoCal was in breach of the agreements for failing to make contractually required payments and failing to appropriately manage the facilities. By the next day, Malan and Hakim had locked SoCal out of both the Dispensary and the Production Facility, and had

repainted the dispensary and changed its name and signage. SoCal's complaint alleged that defendants "destroyed the facilities' financial records, receipts, printers, barcode scanners, and point of sale tracking information . . . ."

C. Hearing on Receiver Appointment and Intervention Complaint

The hearing on Razuki's ex parte application for receivership and on SoCal's ex parte application to file its intervention complaint occurred on July 17. During the brief hearing, Razuki's counsel outlined the basis for the requested relief, explaining that Razuki believed Malan and Hakim had hidden over $1 million in management fees received from SoCal. He also argued a receivership was needed because defendants had violated their management agreements with SoCal, locking SoCal out of both the dispensary and production facility **[*15]** and preventing SoCal from accessing its valuable manufacturing equipment. SoCal also joined in the application for a receiver.

Gina Austin specially appeared on behalf of all of the defendants and said she had not yet been retained in the matter, and that none of the defendants had yet been served with the application for receiver or the complaint in intervention. Austin indicated she had briefly reviewed the receiver application before the hearing, and argued there was no urgency identified that required immediate relief.

The court granted SoCal's application to intervene and then without explanation stated it was "going to grant the relief requested. The injunction is granted. Receivership is appointed." The same day, the court issued a minute order confirming its rulings and signed a proposed order submitted by Razuki, which appointed a receiver over RM Property and the Related Entities (encompassing all three businesses). The orders directed both Razuki and the receiver to post a $10,000 bond within five days. The orders also set an August 10 order to show cause (OSC) to confirm the receiver appointment. Razuki and the receiver, Essary, submitted proof of the requisite undertakings **[*16]** to the court that day.

D. Malan's Peremptory Challenge and Motion to Vacate Receivership; Razuki's Ex Parte Application to Reset OSC Hearing

The day of the hearing, Malan filed a peremptory challenge. The OSC hearing was then vacated and, on July 25 the case was reassigned to Judge Strauss. Three days later, on July 28, Razuki filed an ex parte application for an order to reset the OSC hearing. Before the court took action on this application, Malan filed a competing ex parte application to vacate the receivership order. The application also sought a temporary restraining order (TRO) to prevent Razuki from "transferring money or disposing of property obtained from one of the Defendants since the receivership order was issued" or from entering any real property controlled by defendants.

Malan's moving papers presented a version of events completely at odds with those presented by Razuki and SoCal. Malan asserted that Razuki had no ownership interest in the businesses, pointing to grant deeds transferring the Dispensary and Planned Facility properties to the two Property Owner entities (SD United and Roselle). Malan's declaration stated that he and Razuki mutually agreed to rescind the **[*17]** Settlement Agreement in March 2018 after Razuki was unable to transfer his interests in Sunrise and Super 5 to RM Property. Malan alleged that Razuki filed the lawsuit because "of a large judgment a litigant obtained against him in another lawsuit, which is causing Razuki some cash flow problems."[4]

With respect to SoCal, Malan asserted that in January 2018, the three entities holding the medical marijuana licenses (Balboa Co-op, CCG, and Devilish) hired SoCal to operate the three properties, but SoCal had mismanaged the properties. Malan claimed SoCal had poorly controlled inventory, failed to have sufficient security present and hired a security guard not authorized to carry a firearm, failed "to pay employees correctly," and failed to pay required insurance. Malan also asserted SoCal gave confidential information to Razuki and withheld payments related to the Production Facility property, causing the owner (Mira Este) to default on a loan. Malan said SoCal was conspiring with Razuki "to hijack the three businesses" by filing this lawsuit.[5]

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[4] Malan also said the homeowners association rules governing the Dispensary property prohibit marijuana operations; the association had sued on this issue; and that the lawsuit had resulted in a February 2018 settlement granting a variance to the Property Owner entity (SD United) to operate the Dispensary if certain conditions were met.

[5] Malan also noted the entity holding title to the Dispensary property (SD United) had filed a cross-complaint to quiet title to this property in a separate pending case against Razuki.

Finally, Malan's declaration detailed dramatic events that unfolded on July 17, the day Essary was appointed. Malan stated that after the hearing, **[*18]** several SoCal employees, including one carrying a visible gun, accompanied Essary to the Dispensary parking lot. Malan said he called the police when he saw the "gunman" and when the police arrived at the premises, Essary and the SoCal employees "fled." According to Malan, the employees and Essary returned later in the day, "broke down the door and invaded the building," and stole computers and other equipment. Malan stated that Essary's decision to rehire SoCal after his appointment was evidence of negligence and Essary's inability to manage the businesses.

A supporting declaration from Malan's counsel (Austin) corroborated Malan's statements about the receiver's takeover of the Dispensary. Austin also claimed Essary could not lawfully run the businesses because Essary was not properly licensed. Austin also said the Dispensary was under audit by the City of San Diego and both the Dispensary and Production Facility had upcoming hearings related to their conditional use permits that would be jeopardized by Essary's involvement.

SoCal filed an opposition, refuting Malan's allegations and asserting Malan had made material misrepresentations to the court. SoCal stated Malan falsely claimed **[*19]** Essary had threatened Dispensary employees, when in fact those employees had barricaded themselves into the store "so they could steal the dispensary's money in violation of the [receivership] order, and flee with bags of 'loot' into their attorney's 'getaway car.'" In support, SoCal submitted Essary's declaration stating that after the July 17 hearing, Austin told him she was advising her clients not to follow the court's order and to resist any attempt by Essary to take control of the assets. Essary also described the scene when he went to the Dispensary, explaining the employees locked themselves in a backroom with the safe and security cameras, loaded bags with money, and fled out the back door into Austin's waiting car.

E. July 31, 2018 Hearing Before Judge Strauss

On July 31, Judge Strauss heard Razuki's ex parte application to re-set the OSC to confirm the appointment of the receiver and Malan's ex parte application to vacate the receivership. Counsel for Malan and the entities argued the receivership order was void because Razuki had failed to provide proper notice, the receiver had a prior relationship with Razuki and SoCal that disqualified him, Razuki had failed to show a **[*20]** sufficient ownership interest in the entities, and there was no urgency that supported the drastic remedy of a receiver.

Razuki's counsel responded that Razuki's submitted evidence showed that Malan was attempting to steal assets from Razuki and SoCal, which had invested $2.6 million in equipment and other improvements to the properties. SoCal's counsel asserted there was urgency because Malan had begun to sell SoCal's equipment, and Malan and Hakim had diverted millions of dollars to Monarch that was owed to Razuki. SoCal also asserted a receiver was necessary because the operators hired by the defendants after SoCal's termination threatened the viability of the businesses and the value of its purchase options.

Near the conclusion of the contentious hearing, Hakim's counsel proposed a compromise, suggesting the court issue an injunction returning the parties to the status quo that existed before the receivership order, and that prevented any transfer of funds outside the ordinary course of business. Counsel suggested Razuki could then bring his request for a receiver again, on a noticed motion on shortened time with full briefing and the opportunity to submit evidence. The court adopted **[*21]** the proposal and directed Hakim's counsel to prepare a final order. The court declined to set a date to hear a new motion, instead instructing the parties "when you're ready to file whatever it is you're going to file, we'll see what kind of date we can give you. And we'll make it as soon as possible, but I don't know what that is exactly."

The court issued a minute order on July 31 stating the request to vacate the receivership was granted and directing "counsel to prepare a proposed order for the [c]ourt's review and approval." The order also granted Essary's request to employ counsel and "as to all other matters; the [c]ourt instructs counsel to proceed via noticed motion for remedies being sought."

F. Peremptory Challenge and Case Reassignment to Judge Sturgeon

After the July 31 hearing, SoCal filed its peremptory challenge to Judge Strauss and the case was again reassigned, this time to Judge Sturgeon. On his own motion, Judge Sturgeon scheduled an August 14

hearing to revisit the appointment of the receiver.[6]

On August 10, Razuki filed a "supplemental memorandum of points and authorities in support of appointment of receiver and opposition to [Malan's] ex parte application to vacate **[*22]** receivership order." Razuki argued Judge Strauss's minute order was ineffectual because the court had not signed any final order after the hearing, and he again argued the merits of appointing the receiver. Razuki's counsel outlined in more detail the payments made by SoCal to Monarch that he asserted were misappropriated by Malan and Hakim, and described the potential profitability of the businesses.

In support of his supplemental brief, Razuki filed voluminous records attached to his and other declarations, showing his specific investments into the Dispensary, Production Facility, and Planned Facility properties. For instance, Razuki attached evidence that he invested $254,780 for the down payment for the Production Facility property and paid $200,000 for the operation's business tax certificate, while Hakim invested $420,000 toward the down payment. Razuki also explained that he transferred the Dispensary property from Razuki Investments, LLC, his wholly owned entity, to the Property Owner entity (SD United) because he did not want to violate a settlement agreement he had previously reached with the City after another property he owned was charged with operating a dispensary unlawfully. **[*23]** That other settlement prohibited Razuki from owning a nonpermitted cannabis facility and Razuki feared the Dispensary's violation of the homeowners association rules precluding marijuana operations might constitute a violation.

Malan also filed supplemental briefing, a supporting declaration, and his counsel's declaration. Malan argued the Settlement Agreement was unenforceable because it was in violation of public policy and Razuki had not shown the medical marijuana businesses covered by the agreement were conducted in conformance with the law. Malan also argued that Essary had acted illegally by reinstating SoCal as the operations manager and failing to secure appropriate approval from the state licensing authorities before assuming the receivership.

In his declaration, Malan said that on July 31 (the date of the prior order), he witnessed SoCal employees use a moving truck at the Production Facility to attempt to steal equipment and an office computer. Malan also claimed Essary had stolen $80,000 from the Dispensary. Hakim's declaration stated he paid more than one-half the down payment for the Production Facility property and that Razuki "was insistent on not wanting to appear of **[*24]** record on title in connection with [this] acquisition. . . ."

Neither Malan's nor Hakim's declarations disputed Razuki's assertions concerning his specific ownership interests in the various properties, including that he was the source of a large portion of the down payment for the Production Facility property and had paid for the $200,000 business tax certificate.

G. August 14, 2018 Hearing

On August 14, the parties appeared before Judge Sturgeon for the first time. At the start of the hearing the court rejected the idea that it was conducting a rehearing of the prior orders and stated it would hear the matter anew on August 20. The parties' counsel then disputed whether the receivership had been vacated at the July 31 hearing because no final order had been signed.

After asking questions about the parties' documentation, the court stated it was not reinstating the receiver, and instead would institute a new, temporary order. This order froze all related bank accounts until the next hearing (although it allowed certain product purchases) and enjoined the sale of the three properties at issue.

H. Briefing for August 20, 2018 Hearing

On August 17, 2018, the parties filed additional briefs **[*25]** and voluminous documentation in support of their positions.

[6] The status of Judge Strauss's order vacating the receivership was left in limbo. On August 7, 2018, Hakim's counsel submitted a proposed order to the court, as directed by Judge Strauss, with a letter to Judge Sturgeon explaining the circumstances. Razuki's counsel represented in a declaration filed on August 10, 2018, that Judge Sturgeon's clerk contacted her on August 8, 2018, by telephone and stated that because Judge Strauss had directed counsel to prepare an order after the hearing, and no order was ever signed, the July 31, 2018 minute order vacating the receivership "did not constitute a valid and final order and the receivership was never vacated." Essary submitted a report to the court on August 10, 2018, which stated it was his understanding that the order vacating his appointment was never made final, and that Judge Sturgeon had scheduled an ex parte hearing on August 14, 2018, "to 're-hear' Defendants' ex parte application to vacate the receivership."

Malan filed a supplemental brief and a 20-page supplemental declaration describing additional facts about his relationship with Razuki and the financing and prior ownership of the properties owned by SD United (the Dispensary property owner). Malan also again alleged malfeasance by Essary, asserting payments of over $100,000 to "SoCal insiders" and thousands of dollars to himself while in control of the businesses' bank accounts.

Malan continued to refute Razuki's ownership claims, asserting for the first time that SD United purchased the Dispensary property from Razuki in March 2017, subject to a $475,000 loan held by Razuki that Malan paid off three months later. Malan stated that Razuki abandoned his interest in the Dispensary property because his ownership in another dispensary (Sunrise) was far more lucrative. Malan stated that SD United purchased five other units adjacent to the Dispensary for $1.6 million with financing that did not involve Razuki. Malan repeated his prior allegations that he was coerced into signing the Settlement Agreement, and that he and Razuki mutually agreed to cancel it around January or February **[*26]** 2018.

Hakim's supplemental papers pertained mainly to its claims about SoCal's alleged mismanagement and sought to rebut SoCal's assertions it had option rights and rights to its equipment at the facilities. Hakim also noted that the Planned Facility was currently occupied by a tenant whose rent payments could easily be accounted for.

Razuki also submitted a supplemental brief in which he claimed Malan had immediately violated the court's order by contacting the bank for one of the entities, and another declaration with additional documentation showing his involvement in the financing of the three properties.

SoCal filed additional declarations in support of its position that a receiver was needed and that Essary was qualified to serve as the receiver.

I. August 20, 2018 Hearing

At the August 20 hearing, the court stated it would not address whether the July 31 order vacating the receiver was valid, rather the court was "starting fresh." Razuki's counsel then outlined Razuki's interest in the three businesses, expressing concern that Malan intended to immediately sell the real properties, and asserting Razuki had no confidence a truthful accounting could be done, particularly since the **[*27]** businesses were operated almost entirely in cash.[7] SoCal's counsel argued a damage award would be insufficient to remedy the breaches of its options for the real properties.

Malan's counsel repeated his argument that the Settlement Agreement was unenforceable as against public policy and also noted RM Property was never capitalized. He continued to assert there was no urgency requiring a receiver because all the asserted damages could be determined by an accounting. He also said that SoCal's poor management of the Dispensary had resulted in a default by the entity Property Owner (SD United) under the homeowners association settlement, irreparably harming the business. Hakim's counsel refuted the validity of SoCal's options and confirmed the Planned Facility was not currently a marijuana operation.

Essary's counsel explained Essary's activity during his appointment from July 17 to July 31, and refuted defendants' assertions that Essary had not satisfied the regulatory requirements to manage the Dispensary and Production Facility operations.

After the conclusion of arguments, the court imposed a temporary receivership and set a further hearing for Friday, September 7 to consider the continued **[*28]** need for the receiver. The court stated Razuki had shown a likelihood of prevailing on the merits and that there was a risk of irreparable harm "based on the amount of money that allegedly ha[d] been put into this case." The court again appointed Essary as the receiver and directed him to keep the two existing managers (Synergy and Far West) in place as managers of the Production Facility and the Dispensary, respectively.

The court also entered orders specifying who Essary should hire as the accountant for the entities in the receivership. The court ordered Essary to file a report on September 5 and ordered the parties to file any additional supplemental briefing three days before the hearing. The court excluded the Planned Facility from the receivership, but imposed a TRO preventing the

[7] Razuki's counsel also asserted there was some indication that Malan and Hakim had given purchase options to Far West Operating, LLC (Far West) (which was the operator hired after Malan terminated SoCal in early July and was reinstated as the operator after July 31, 2018) and Synergy Management Partners, LLC (Synergy) (the company hired after July 31, 2018 to run the Mira Este production facility) that overlapped with SoCal's options, creating the risk of further litigation and additional need for the receiver.

sale of this property.

On August 28, the court entered the order appointing Essary as the receiver over the Dispensary and Production Facilities, the entity owners of these properties, and their license holders.

J. Briefing for September 7, 2018 Hearing

One week later, Hakim filed another supplemental brief, arguing the receivership had already caused irreparable harm to the Production Facility because **[*29]** producers and manufacturers were unwilling to work with the business while it was under the control of the receiver. Hakim also asserted the new manager (Synergy) could soundly manage the facility and keep meticulous records for any required accounting, preventing any harm to Razuki. Finally, Hakim argued a $10 million dollar bond was appropriate.

In his supplemental brief, Malan continued to refute Razuki's interest in the three businesses.[8] Malan asserted the receivership was detrimental to the businesses and that the receiver had already proven too expensive. Malan also continued to allege malfeasance by Essary.

Malan's declaration outlined additional details about his relationship with Razuki, explaining that in 2014 he and Razuki began investing in properties together with a 75/25 split in Razuki's favor, and that they purchased 50 properties including a gas station and two marijuana dispensaries. Malan stated Razuki then refused to honor their arrangement and did not share rent proceeds as they agreed, resulting in the 2017 Settlement Agreement. Malan repeated his assertion he was tricked into signing that agreement and that he and Razuki agreed to rescind it in February 2018. Malan **[*30]** also stated for the first time that he and Razuki had then agreed to keep the properties they controlled, with Malan taking ownership of all of the assets under the control of the receiver.

Malan's attorney (Austin) submitted a declaration expressing concern over Essary's decision to hire a partner in the law firm representing SoCal, as the receiver's cannabis expert, rather than her recommended independent expert. Austin also said the City's consultant who conducted an audit of the Dispensary had recently discovered an approximate $100,000 discrepancy while SoCal was the operator.

On September 5, Essary submitted his first receiver's report outlining his activity related to the Dispensary and the Production Facility.

K. September 7 Order Confirming Receiver Appointment for 60 Days

At the September 7 hearing, the parties' counsel reiterated their positions at length.

Razuki's counsel emphasized the entirely cash nature of the businesses, noting the cash could be easily hidden. Malan's counsel countered that discovery was the proper mechanism for Razuki to obtain financial information about the businesses, and that most of the relevant information was in SoCal's possession. Malan's counsel **[*31]** continued to challenge Razuki's assertion he had invested millions into the businesses, and argued a remedy less drastic than a receiver would be more appropriate, such as requiring a forensic accountant to assess all of the business accounts and operations.

Hakim's counsel focused on the harm resulting if the receiver remained in place, emphasizing the inability to attract any producers, and citing the uncertainty the property could be sold and the risk that trade secrets would be disclosed. Hakim's counsel also suggested that Razuki's interest in the Production Facility property could be protected by requiring his portion of profits to be deposited into a separate account that the other parties could not access.

In response to the court's inquiry, Essary's attorney stated he did not think the receivership would prevent new producers from contracting at the Production Facility and any concern about the disclosure of trade secrets could be rectified with a nondisclosure agreement.

After considering the voluminous written record and the parties' oral arguments at the several hearings, the court confirmed its receivership decision. The court concluded Razuki had shown a sufficient probability **[*32]** of prevailing on his claims, and that based on the documentation submitted to the court there was a risk of

[8] Malan lodged close to 100 exhibits consisting primarily of documents he asserted showed his control of the three businesses and related properties, e.g., cancelled checks, wire transfer receipts, and receipts for various business expenses, as well as documents from other lawsuits that allegedly showed Razuki's manipulation of the justice system to gain an advantage in real estate dealings.

irreparable harm requiring protection. The court appointed Essary as the receiver for an additional 60 days, after which it would reconsider the appointment, and ordered Essary to hire an outside accountancy firm to conduct a forensic accounting of the Production Facility, the Dispensary, and all of the interested parties' contributions to those businesses. The court ordered the receivership to remain over the same entities and ordered Razuki to post a bond of $350,000 within two weeks, with the existing order remaining in place until the bond was posted, and ordered that if the bond was not posted the receivership would be dissolved. The court directed the receiver's counsel to submit a final proposed order.

On September 13, the receiver's attorney submitted a proposed order. Seven days later, on September 20, Razuki filed notice he had posted the receivership bond of $350,000 on September 18.

On September 26, 2018, the court entered the order challenged in this appeal, entitled "Order Confirming Receiver and Granting Preliminary Injunction" (the September 26 order). The order **[*33]** confirmed Essary's appointment as receiver over two of the Property Owner entities (SD United and Mira Este); three license holder entities (Balboa Co-op, CCG, Devilish), and the business manager entity (Flip). The order required Essary to retain an independent accountant to conduct "a comprehensive forensic audit of the Marijuana Operations, as well as of all named parties in this matter as it relates to financial transactions between and among such parties related to the issues in dispute." The order excluded the Planned Facility, lifting the prior restraining order preventing its sale.

L. Notices of Appeal From the September 26 Order

Malan, SD United, Flip, and the three license holders (Balboa Co-op, CCG, and Devilish) filed their joint notice of appeal from the September 26 order on October 30, 2018. Hakim and the entities related to the Production Facility (Roselle and Mira Este) filed their joint notice of appeal from the order on November 2, 2018.[9]

DISCUSSION

[9] Our references to appellate arguments made by Malan and/or Hakim includes the entities related to each of these parties in their notices of appeal.

Malan and Hakim challenge the court's imposition of the receiver over the Dispensary and Production Facility related entities (SD United, Mira Este, Balboa Co-op, CCG, Devilish, and Flip).[10] Malan raises several errors in the **[*34]** process used to appoint the receiver and asserts that Essary is biased against him. Both appellants argue the court abused its discretion by appointing Essary, contending that Razuki did not show a sufficient probable interest in the assets placed under receivership and that the balance of harms did not favor him. Finally, Malan and Hakim assert the doctrine of unclean hands prevents the appointment of a receiver in this case.

I. Legal and Procedural Standards

A. Receivership Standards and Procedure

The appointment of a receiver is a provisional equitable remedy. The receiver's role is to preserve the status quo between the parties while litigation is pending. (*Southern California Sunbelt Developers, Inc. v. Banyan Limited Partnership (2017) 8 Cal.App.5th 910, 925, 214 Cal. Rptr. 3d 719*.) Further, it is "'an ancillary remedy which does not affect the ultimate outcome of the action.'" (*Ibid.*)

The court's role in supervising a receiver cannot be overstated. "'The receiver is but the hand of the court, to aid it in preserving and managing the property involved in the suit for the benefit of those to whom it may ultimately be determined to belong.' [Citations.]" (*Marsch v. Williams (1994) 23 Cal.App.4th 238, 248, 28 Cal. Rptr. 2d 402* (*Marsch*).) The receiver is the agent of the court and not of any party and, as such, is neutral, acts for the benefit of all who may have an interest in **[*35]** receivership property, and holds assets for the court rather than the parties. (*O'Flaherty v. Belgum (2004) 115 Cal.App.4th 1044, 1092, 9 Cal. Rptr. 3d 286* (*O'Flaherty*); see *People v. Stark (2005) 131 Cal.App.4th 184, 204, 31 Cal. Rptr. 3d 669*; *Cal. Rules of Court, rule 3.1179(a)*.)[11] Put another way,

[10] Although the court's order appointing Essary is styled "Order Confirming Receiver and Granting Preliminary Injunction," neither Malan's nor Hakim's briefing challenges a preliminary injunction. Rather, appellants briefing exclusively seeks reversal of the trial court's order appointing the receiver and return to them of the properties, assets, and companies placed under the receiver's control in accordance with that order.

[11] All rule references are to the California Rules of Court.

appointment of a receiver is a tool for the court to gain control over a chaotic ownership dispute like the turbulent situation Judge Sturgeon found when he was assigned to this case.

"'In California, a receiver may not be appointed except in the classes of cases expressly set forth in the statutes or as authorized under established usage of the court's equitable powers.' [Citations.]" (*O'Flaherty, supra, 115 Cal.App.4th at p. 1092*.) *Code of Civil Procedure section 564* generally sets forth the statutory circumstances under which a receiver can be appointed.[12] (*Marsch, supra, 23 Cal.App.4th at p. 248*.) *Section 564, subdivision (b)* states: "A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in the following cases," and then lists 12 particular circumstances that can support the appointment of a receiver.

Two of these circumstances are relevant here. First, *section 564, subdivision (b)(1)* states: "(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, *or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose* ***[*36]*** *right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured*." (Italics added.) Second, *section 564, subdivision (b)(9)* is a catchall, providing for the appointment of a receiver "[i]n all other cases where necessary to preserve the property or rights of any party."

"The requirements of *[section 564*] are jurisdictional, and without a showing bringing the receiver within one of the subdivisions of that section the court's order appointing a receiver is void." (*Turner v. Superior Court (1977) 72 Cal.App.3d 804, 811, 140 Cal. Rptr. 475*.) To invoke the authority of the court to appoint a receiver under *section 564, subdivision (b)(1)*, the plaintiff must establish by a preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." (*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp. (1953) 116 Cal.App.2d 869, 873, 254 P.2d 599* (*Alhambra*).) Lack of standing (here alleged to be lack of probable possession of the property) to seek a receivership is a jurisdictional defect that subjects the action to dismissal. (*O'Flaherty, supra, 115 Cal.App.4th at p. 1095*.)

Importantly, "[t]he trial court on the motion for receivership is not required to determine the ultimate issues involving the ***[*37]*** precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown." (*Maggiora, supra, 249 Cal.App.2d at p. 711*.) "'Evidence to justify the appointment of a receiver may be presented "in the form of allegations in a complaint or other pleading, by affidavit or by testimony."'" (*Republic of China v. Chang (1955) 134 Cal.App.2d 124, 132, 285 P.2d 351*, italics removed.)

Procedurally, the Code of Civil Procedure and the Rules of Court set two paths for obtaining a receiver. A party seeking the appointment of a receiver can do so either on an ex parte basis, or by noticed motion. Under either path, the substantive requirements for appointment of the receiver under *section 564* are the same. Additional procedural protections, however, are required under the Rules of Court when an applicant proceeds on an ex parte basis.

Under rule 3.1175(a)(1), a plaintiff seeking a receiver on an ex parte basis, must show by declaration "[t]he nature of the emergency and the reasons irreparable injury would be suffered by the applicant during the time necessary for a hearing on notice." In addition, the applicant must show, by declarations or a verified pleading, (1) the names and contact information for "the persons in actual possession of the property"; ***[*38]*** (2) "[t]he use being made of the property by the persons in possession"; and (3) "[i]f the property is a part of the plant, equipment, or stock in trade of any business, the nature and approximate size or extent of the business and facts sufficient to show whether the taking of the property by a receiver would stop or seriously interfere with the operation of the business." (Rule 3.1175(a)(2)-(4).) If any of this information is "unknown to the applicant and cannot be ascertained by the exercise of due diligence, the applicant's declaration or verified complaint must fully state the matters unknown and the efforts made to acquire the information." (*Ibid.*)

In addition to the requirements of rule 3.1175, when an applicant proceeds on an ex parte basis, section 566, subdivision (b) requires an undertaking in an amount fixed by the court before imposing the receivership order. At the ex parte hearing, the applicant must

[12] Subsequent undesignated statutory references are to the Code of Civil Procedure.

propose specific amounts, and the reasons for the amounts proposed, of the undertakings required from the applicant by section 566, subdivision (b) and from the receiver by section 567, subdivision (b). (Rule 3.1178.)

If a receiver is appointed on an ex parte basis, the matter "must be made returnable upon an order to show cause why appointment should not be confirmed." (Rule 3.1176, subd. (a).) The OSC must be set within **[*39]** 15 days, "or if good cause appears to the court," within 22 days of appointment of the receiver. (*Ibid.*) On an OSC, or a noticed motion, the applicant's moving papers must allege sufficient facts establishing one of the statutory grounds for the appointment, as well as irreparable injury and the inadequacy of other remedies. (*Alhambra, supra, 116 Cal.App.2d at p. 873*.) The court has discretion to require the applicant to post a bond if the receivership is confirmed, but unlike at the ex parte stage, the bond is not statutorily required. Under section 567, subdivision (b) the receiver must maintain a bond under either procedure.

B. Standard of Review

"Where there is evidence that the plaintiff has at least a probable right or interest in the property sought to be placed in receivership and that the property is in danger of destruction, removal or misappropriation, the appointment of a receiver will not be disturbed on appeal." (*Sachs v. Killeen (1958) 165 Cal.App.2d 205, 213, 331 P.2d 735* (*Sachs*).) "The discretion of the trial court is so broad that an order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receiver will not be reversed. [Citation.] To justify our interference, it must clearly appear that the appointment was an arbitrary exercise of power [citation]." **[*40]** (*Maggiora, supra, 249 Cal.App.2d at pp. 710-711*; see also *Breedlove v. J.W. & E.M. Breedlove Excavating Co. (1942) 56 Cal.App.2d 141, 143, 132 P.2d 239* ["[W]here a finding, based upon conflicting evidence, is to the effect that danger is threatened to property or funds, and the appointment of a receiver is made, it is seldom that the reviewing court will hold that the lower tribunal has been guilty of an abuse of the discretion confided to it."].)

II. Procedural Challenges to the Order Appointing Essary

Because of the peremptory challenges and their attendant judicial reassignments, the procedure followed in this case did not precisely align with the conventional paths laid out by the rules. After Razuki obtained the initial appointment of the receiver on July 17 on an ex parte basis, the confirmation process required by rule 3.1176, subdivision (a) was short-circuited. Before the receivership could be confirmed through the issuance of an OSC, the receivership was vacated by Judge Strauss on July 31. That order was then interrupted by SoCal's peremptory challenge and Judge Sturgeon began the ex parte proceedings anew.

Although no order clarified whether the parties were to proceed by way of noticed motion or on an ex parte basis, the timeline of events generally followed the ex parte and confirmation by OSC procedure set forth in rules 3.1175 and 3.1176. Of note, at **[*41]** the August 20 hearing, the court stated that the next hearing should occur "within 15 to 20 days" and set the hearing for September 7 to consider the continuation of the receivership and the bond amount that should be required from Razuki. Further, no party filed a noticed motion with respect to the appointment of (or request to vacate) the receiver.

A. Failure to Require Undertaking

Malan first asserts that the initial order imposing the receiver issued by Judge Medel on July 17 was void because it "did not require an undertaking from the applicant *before* the order would take effect," and that every order thereafter was void as a result. (Italics added.) Malan also argues that Razuki failed to post a bond before Judge Sturgeon imposed the receivership a second time on August 20, again violating section 566 and voiding the September 26 order confirming the receivership at issue in this appeal.

Malan's arguments are not well taken. Section 566, subdivision (b) states, "if a receiver is appointed upon an ex parte application, the court, before making the order, must require from the applicant an undertaking in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant all damages the defendant **[*42]** may sustain by reason of the appointment of the receiver and the entry by the receiver upon the duties, in case the applicant shall have procured the appointment wrongfully, maliciously, or without sufficient cause." As has been described, Razuki proceeded by ex parte application. The initial order issued by Judge Medel provided Razuki a five-day grace period. Razuki, however, posted the bond *the day*

the order was issued, satisfying the statute's requirement.

Even if we were to conclude the initial receivership was invalid because it gave Razuki five days to post an undertaking, we do not agree with Malan's contention that the September 26 order is therefore void.

To advance this argument, Malan relies on *Bibby v. Dieter (1910) 15 Cal.App. 45, 113 P. 874*, which held an order appointing a receiver upon an ex parte application without the required undertaking is void *and all subsequent orders arising from that appointment order are void.* This case is not governed by this rule because the challenged receivership order did not arise from the initial appointment order claimed to be void. Instead, after the two successful peremptory challenges, Judge Sturgeon made clear he was considering the receivership petition anew. The court had the **[*43]** full authority to vacate the earlier orders and rule on the petition as a matter of first impression. (See, e.g., *Wiencke v. Bibby (1910) 15 Cal.App. 50, 53, 113 P. 876* ["'The power of a court to vacate a judgment or order void upon its face is not extinguished by lapse of time, but may be exercised whenever the matter is brought to the attention of the court. . . . The court has full power to vacate such action on its own motion and without application on the part of anyone.'"]; *State of California v. Superior Court (Flynn) (2016) 4 Cal.App.5th 94, 100, 208 Cal. Rptr. 3d 501* ["Even without a change of law, a trial court has the inherent power to reconsider its prior rulings on its own motion at any time before entry of judgment."].)

Malan alternatively asserts that Judge Sturgeon's August 20 order appointing Essary for the second time was void because it did not require another undertaking by Razuki before it took effect. However, Malan does not explain why the initial $10,000 bond filed by Razuki was insufficient to satisfy section 566. While a dispute existed when the case was reassigned to Judge Sturgeon about whether that receivership was vacated by Judge Strauss on July 31 because no final order was signed, the record shows that Razuki's undertaking remained in place through September 19, 2018, when Razuki filed notice he had posted the **[*44]** $350,000 undertaking.[13] We presume the court was aware of the bond, which satisfied section 566. (See *Howard v. Thrifty Drug & Discount Stores (1995) 10 Cal.4th 424, 443, 41 Cal. Rptr. 2d 362, 895 P.2d 469* ["'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion."'"]; *In re Marriage of Arceneaux (1990) 51 Cal.3d 1130, 1133, 275 Cal. Rptr. 797, 800 P.2d 1227*, ["A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness."])[14]

B. Failure to Timely Serve First Amended Complaint

In a similar vein, Malan argues that Razuki's failure to serve defendants with the first amended complaint within five days of the July 17 order, as required by rule 3.1176(b)-(c), requires reversal of the September 26, 2018 order.

Rule 3.1176(b) states that when a receiver is appointed on an ex parte basis, service of the complaint, notice of the OSC, and any supporting memorandum and declarations "must be made as soon as reasonably practical, but no later than 5 days after the date on which the order to show cause is issued, unless the court orders another time for service." Under rule 3.1176(c), if the applicant fails to "exercise diligence to effect service upon the adverse parties as provided in (b), the court may discharge the receiver."

Razuki provided the trial court with a reasonable **[*45]** explanation for the delay in serving the first amended complaint. He explained he was unable to obtain a conformed copy from the court's business office because of its backlog and that after the case was reassigned to Judge Strauss, his ex parte hearing to obtain an order from the court to require the court's business office to expedite return of the conformed

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[13] Despite the lack of a final order after the July 31 hearing, the record also shows Essary and the defendants treated the receivership as being vacated that day. For example, the Dispensary and Production Facility resumed operations that day without any oversight by Essary. On appeal, no party suggests the July 31 order was not effective because it was not final.

[14] Malan also argues the September 26 order violated section 566 because it gave Razuki 14 days to post the $350,000 bond ordered on September 7, 2018. However, there is no bond requirement on the applicant for an order confirming the receivership. (§ 566, subd. (b); see § 41:7. Undertakings, bonds, receiver's oath, and related claims, 12 Cal. Real Est. § 41:7 (4th ed.) [No similar statutory requirement to file an undertaking where the application for appointment of receiver is made on a noticed motion or for the confirmation of an order appointing a receiver on an ex parte basis.].) Rather a bond may be imposed at the court's discretion.

pleading was taken off calendar. Razuki explained to the trial court that after the case was reassigned, he obtained a new ex parte hearing before Judge Strauss to expedite processing of the complaint. This evidence established Razuki's diligence in attempting to serve defendants. Further, any error was mooted by Judge Strauss's July 31 order vacating the receiver and Judge Sturgeon's August 14, 2018 order declining to reinstate Essary. Malan's argument does not support reversal of the September 26 order.

C. Failure to Schedule OSC Hearing Within 22 Days of July 17 Order

Malan also argues the court's failure to make the OSC returnable within 15 days of the July 17 order appointing Essary, as required by rule 3.1176, voids the receivership. This argument lacks merit.

Rule 3.1176(a) requires the OSC to "be made returnable on the earliest date that the business **[*46]** of the court will admit, but not later than 15 days or, if good cause appears to the court, 22 days from the date the order is issued." (Rule 3.1176 (a).) At the time it instituted the first receivership on July 17, the court did set the hearing on the OSC outside the rule time. The OSC, however, was vacated after Malan filed his peremptory challenge to Judge Medel, mooting the purported violation of rule 3.1176(a). Further, Malan has provided no legal authority or argument to support his assertion that this technical error requires reversal of the later receivership order that is before this court on appeal.[15] (See *Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 545-546, 35 Cal. Rptr. 2d 574* (*Mansell*) [appellate court need not furnish argument or search the record to ascertain whether there is support for appellant's contentions].)

III. Receiver's Alleged Bias and *Rule 3.1179(b)*

Malan next contends that Essary was improperly biased against him and that Razuki and Essary violated *rule 3.1179(b)*, which prohibits a receiver from making an agreement with the party seeking the receiver to hire particular service providers. Razuki responds that the trial court considered these allegations, and properly rejected them in view of all of the evidence.

Rule 3.1179(b) states: "The party seeking the appointment of the receiver may not, directly **[*47]** or indirectly, require any contract, agreement, arrangement, or understanding with any receiver whom it intends to nominate or recommend to the court, and the receiver may not enter into any such contract, arrangement, agreement, or understanding concerning: [¶] (1) The role of the receiver with respect to the property following a trustee's sale or termination of a receivership, without specific court permission; [¶] (2) How the receiver will administer the receivership or how much the receiver will charge for services or pay for services to appropriate or approved third parties hired to provide services; [¶] (3) *Who the receiver will hire, or seek approval to hire, to perform necessary services*; or [¶] (4) What capital expenditures will be made on the property." (Italics added.) The rule contains no remedy for a violation, and does not require the court to void the receivership if it is violated.

The record shows the order issued by the court ensured the receiver was exercising independent authority in determining who to hire and how to manage the assets. Further, Malan points to no evidence of the existence of any agreement or understanding between Razuki and Essary concerning who **[*48]** Essary would hire if appointed. The court's rejection of Malan's argument that there was an agreement between Razuki and Essary that violated *rule 3.1179(b)(3)* was not an abuse of discretion.

With respect to Malan's assertion that Essary was biased against him, Malan points out that the initial July 17 order signed by Judge Medel authorized the receiver "to bind the Marijuana Operations to the terms of the Management Agreement . . . with SoCal . . . ." This order, however, was replaced and is not before this court on appeal.

The record shows that Judge Sturgeon was careful with respect to SoCal's continued role in the businesses. At the August 20 hearing, and as reflected in the court's written orders, Judge Sturgeon specifically prohibited Essary from hiring SoCal, instead directing the receiver to keep the new managers (Far West and Synergy), who were favored by Malan and Hakim, in place as the operators of the Dispensary and the Production Facility. As the court directed, Essary maintained those entities in place after his August 20 appointment. There is no support in the record for Malan's position that the court

[15] Malan's assertion that the court violated rule 3.1176(a) at the August 20 hearing by setting the next hearing to confirm its appointment of Essary 18 days later is also without merit. The hearing was within the rule limit of 22 days and Malan does not challenge the existence of good cause to set the hearing beyond 15 days.

abused its discretion by appointing Essary, that Essary's actions showed bias in favor **[*49]** of Razuki, or that Essary violated *rule 3.1179(b)* after his August 20 appointment.[16]

IV. No Abuse of Discretion on *Section 564, subdivision (b)(1)* Issues

Malan and Hakim both argue in different ways that the court was required to determine whether Razuki showed a probability of success on the merits of his claims. Hakim asserts that "the trial court abused its discretion in appointing a receiver because the probability of success at trial between Razuki on the one hand and [the Production Facility entities (Mira Este and CCG)] on the other hand indisputably favors" these entities. Malan argues the Settlement Agreement "is void for violating public policy at the time it was created, so [Razuki] has not shown the requisite likelihood of success on the merits."

To appoint a receiver, however, the trial court was not required to determine the probability of success on any particular claim. Rather, as set forth above, to invoke the court's authority to appoint a receiver under *section 564, subdivision (b)(1)*, a plaintiff seeking a receiver must establish by a preponderance of the evidence a "joint interest with [the] defendant in the property; that the same was in danger of being lost, removed or materially injured, and that plaintiff's right to possession was probable." **[*50]** [17] (*Alhambra, supra, 116 Cal.App.2d at p. 873*; see *Maggiora, supra, 249 Cal.App.2d at p. 711*.)

Contrary to appellants' arguments, the trial court was "not required to determine the ultimate issues involving the precise relationship of the parties. At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown [citations]." (*Maggiora, supra, 249 Cal.App.2d at p. 711*.) Notably, an interest in the profits of a concern is "a significant factor in determining the necessity of a receiver [citation]. . . ." (*Id. at p. 711, fn. 3*.)

A. Razuki's Interest in Dispensary and Production Facility Entities

Malan and Hakim argue the receivership order must be vacated because Razuki failed to show a sufficient interest in the entities over which the receiver was appointed to satisfy *section 564, subdivision (b)(1)*. Further, they contend that the catchall provision of *section 564, subdivision (b)(9)* is unavailable because Razuki chose to proceed under subdivision (b)(1).

Razuki responds that the Settlement Agreement, enforceable or not, is evidence of an oral partnership agreement with Hakim and his significant interest in the Dispensary and the Production Facility. Further, his declarations and the attached documentation showed his significant financial contributions to these businesses. We agree with Razuki that these facts supported **[*51]** the trial court's determination that he had standing to pursue a receiver under *section 564, subdivision (b)(1)* over the Dispensary and Production Facility, and the various entities that served the two businesses.[18]

The evidence presented to the trial court satisfied the requirement that Razuki show a probable interest in the assets. Razuki's declaration attached the executed Settlement Agreement memorializing his interest in the operations of both the Dispensary and the Production Facility, specifically his right to receive profits from those entities through the mechanism of RM Property. In addition, Razuki's declaration outlined the background of the Settlement Agreement and the underlying partnership with Malan, which showed their agreement to share the profits from their joint ventures. Indeed, Malan's own declaration recounted his longstanding arrangement with Razuki whereby profits in their real estate investments were split 75/25 in favor of Razuki.

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[16] The record does show the cannabis industry in San Diego is relatively small and many of the players in this litigation had existing relationships. For example, as SoCal argued below, Austin introduced Malan and Hakim to her client Jerry Baca, who formed Synergy in late August 2018 with Austin's counsel for the purpose of managing the Production Facility.

[17] Hakim cites one case addressed to the probability of prevailing, *Teachers Ins. & Annuity Assn. v. Furlotti (1999) 70 Cal.App.4th 1487, 1493, 83 Cal. Rptr. 2d 455* (*Teachers*). *Teachers*, however, was an appeal of a preliminary injunction requiring the defendant to remove a fence in a shared easement. (*Id. at pp. 1490-1492*.)

[18] Malan makes passing reference in his brief to the inclusion of Devilish in the receivership as improper because the title owner (Roselle) was excluded and Devilish was formed to hold Roselle's licenses. However, despite the exclusion of Roselle, Devilish was explicitly named as a party to the management agreement with SoCal for the Production Facility, bringing Devilish within the purview of the receivership.

Razuki also submitted documentation showing the collateral he pledged to secure the purchase and refinancing of the Production Facility property; his cash investments of over $450,000 in this property and the facility's licensure; and documentation showing the transfer **[*52]** of the Dispensary property from an entity wholly owned by him to SD United. Although Malan and Hakim submitted documentation showing their own investments in the properties and businesses, the documents did not refute Razuki's evidence of his own interest.

These facts distinguish the case from *Rondos v. Superior Court of Solano County (1957) 151 Cal.App.2d 190, 311 P.2d 113*, relied upon by appellants. In *Rondos*, one of two owners of a business licensed by the Department of Alcoholic Beverage Control (ABC), Marvin Caesar, contracted to sell his stake to Edward Essy with the consent of the other owner, George Rondos. When the required application to transfer the business was not approved by ABC within a year, Rondos served Essy with notice of rescission of the contract for sale and notified ABC that he was withdrawing the application for transfer. Essy brought suit and obtained the appointment of a receiver over the business. (*Id. at p. 193*.) The Court of Appeal reversed the receivership order, holding that Essy had failed to establish a probable interest under *section 564, subdivision (1)* (the identical predecessor to (b)(1)). (*Rondos, at pp. 194-195*.) Critically, the parties' contract explicitly stated the transfer of Caesar's interest to Essy would not occur until ABC approved the transfer. (*Id. at p. 194*.) No similar uncontroverted evidence **[*53]** exists in this case that would have precluded the trial court's finding that Razuki had shown a probable interest in the assets at issue.

Malan and Hakim point to no evidence showing Razuki's contributions to the businesses did not occur, or that Razuki made them without expectation of sharing in the profits. The trial court was tasked with making a preliminary determination as to whether Razuki was a partner or investor in these assets with a *probable* interest in them. There was sufficient evidence before the court supporting its determination that Razuki had satisfied this standard. (See *Maggiora, supra, 249 Cal.App.2d at p. 711* ["At this stage of the proceedings, nothing more than a probable joint or common interest in the property concerned need be shown . . . ."]; see also *Eng v. Brown (2018) 21 Cal.App.5th 675, 694, 230 Cal. Rptr. 3d 771* ["In general, 'the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.' (*Corp. Code, § 16202, subd. (a)*.) With certain exceptions, '[a] person who receives a share of the profits of a business is presumed to be a partner in the business . . . .' . . . "].) It is not this court's role to second guess that determination.

Appellants' claim that Razuki lacks a sufficient interest **[*54]** to obtain a receiver bears a resemblance to the issue decided in *Sachs*, an appeal from the confirmation of a receiver after an ex parte appointment. (*Sachs, supra, 165 Cal.App.2d at p. 207*.) There, the defendants "urge[d] that the written agreement" giving plaintiff, the inventor of a device "to regulate the speed of electric motors," a percentage of net profits in the manufacturing and sale of the device "created neither a partnership nor a joint venture." (*Id. at p. 213*.) The defendants asserted that the plaintiff was "in the position of an unsecured creditor suing at law to recover a debt." (*Ibid.*) The trial court rejected this argument, concluding even if it was an accurate analogy, it did not preclude the receivership because "[t]he action is not one of law, but is essentially an equitable action to obtain an accounting and establish a constructive trust." (*Ibid.*)

In affirming, the *Sachs* court recognized the defendants had submitted conflicting evidence, denying that the plaintiff invented the device and contending he stole it from his employer, and asserting the profit sharing agreement was unenforceable because the plaintiff had failed to uphold his obligation to do certain "experimental and design work." (*Sachs, supra, 165 Cal.App.2d at p. 210*.) However, the court **[*55]** concluded the plaintiff's assertion that he entered into the agreement with the defendants was sufficient under the receivership statute to support the trial court's finding that the plaintiff had shown a probable interest in the business. (*Id. at p. 213*.)

As in *Sachs*, defendants here submitted evidence contradicting Razuki's claim to the property and profits of the Dispensary and Production Facility. This conflicting evidence, however, does not establish the court abused its discretion by crediting Razuki over defendants and finding Razuki had shown a probable right to possession at this stage of the litigation.

For these same reasons, we reject Malan's assertion that Razuki's failure to transfer his pledged interests in Super 5 and Sunrise to RM Property, as contemplated by the Settlement Agreement, precludes appointment of

the receiver.[19] This fact does not conclusively establish that Razuki lacked a probable interest in the assets placed in receivership. Rather, it was one fact among many conflicting facts about Razuki's ownership.[20]

B. Enforceability of Settlement Agreement As Against Public Policy

Malan argues the Settlement Agreement is void because it was against public policy when it was entered **[*56]** and therefore Razuki "has not shown the requisite likelihood of success on the merits." Malan also argues the explicit protection for contracts involving cannabis businesses afforded by *Civil Code section 1550.5* are not applicable because the law became effective after the Settlement Agreement was executed.

As discussed, the law applicable to the appointment of a receiver does not require the plaintiff to show a likelihood of prevailing on the merits of his claims. Rather, Razuki was required to show a probable right to the assets placed in receivership and that "the same was in danger of being lost, removed or materially injured . . . ." (*Alhambra, supra, 116 Cal.App.2d at p. 873*.) Further, the trial court "is not required to determine the ultimate issues involving the precise relationship of the parties." (*Maggiora, supra, 249 Cal.App.2d at p. 711*.)

Malan's assertion that the Settlement Agreement is unenforceable because it was against the public policy of this state at the time it was entered, does not convince us the trial court abused its discretion by appointing the receiver. "Anything that has a tendency to injure the public welfare is, in principle, against public policy. But to determine what contracts fall into this vague class is exceedingly difficult. It has been frequently observed **[*57]** that the question is primarily for the Legislature, and that, in the absence of a legislative declaration, a court will be very reluctant to hold the contract void." ([§ 453] General Principle., 1 Witkin, Summary 11th Contracts § 453 (2020); see also *Moran v. Harris (1982) 131 Cal.App.3d 913, 919-920, 182 Cal. Rptr. 519*, quoting *Stephens v. Southern Pacific Co. (1895) 109 Cal. 86, 89-90, 41 P. 783* [""The power of the courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt." [Citation.] . . . "No court ought to refuse its aid to enforce a contract on doubtful and uncertain grounds. The burden is on the defendant to show that its enforcement would be in violation of the settled public policy of this state, or injurious to the morals of its people." [Citation.]"].)

As an initial matter, Razuki's claims are not entirely reliant on the enforceability of the Settlement Agreement. Razuki sought the receiver appointment to protect his rights to the real properties and to the past and potential profits derived from the Dispensary and the Production Facility. He seeks to enforce those rights not only by way of the Settlement Agreement, but also by enforcement of his **[*58]** oral partnership agreement with Malan.

Additionally, the Settlement Agreement on its face does not concern the operations of a recreational marijuana business, which could arguably have been classified as illegal at the time the agreement was executed. The agreement's first recital states: "RAZUKI and MALAN have engaged in several business transactions, dealings, agreements (oral and written), promises, loans, payments, related to the acquisition of real property and interests in various *medical marijuana* businesses. Specifically, RAZUKI and MALAN have each invested certain sums of capital for the acquisition of the following assets . . . ." (Italics added.) At the time the contract was entered, business related to the provision of *medical marijuana* was lawful and not against this state's public policy.

In addition, the fact that marijuana use remains a violation of federal law does not necessarily establish the contract is unenforceable. Even if a dispute involves an "illegal contract" it can "be enforced in order to 'avoid unjust enrichment to a defendant and a disproportionately harsh penalty upon the plaintiff.'" (*Asdourian v. Araj (1985) 38 Cal.3d 276, 292, 211 Cal. Rptr. 703, 696 P.2d 95*.) """[T]he extent of enforceability and the kind of remedy granted **[*59]** depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality and the particular

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[19] We also reject Malan's contention that Razuki's failure to join Super 5 and Sunrise as indispensable parties precludes his claims. Malan fails to provide any legal argument in support of this position. (*Mansell, supra, 30 Cal.App.4th at pp. 545-546*.)

[20] We do agree with Hakim and Malan that proceeding under one of the more specific provisions of *section 564* precludes reliance on the catchall provision of subdivision (b)(9). (See *Marsch, supra, 23 Cal.App.4th at p. 246, fn. 8*.) However, because we affirm the trial court's finding under subdivision (b)(1), we need not address the issue.

facts."'" (*Ibid.*)

The trial court was tasked with making an early determination concerning the necessity of a receiver to protect the real property and other assets at issue. The court was not charged with determining the ultimate issue of enforceability of the Settlement Agreement and its failure to reach this issue to preclude Razuki's claims at this stage was not an abuse of discretion.[21]

C. Necessity of Derivative Action

Malan also argues that Razuki lacks standing to enforce the Settlement Agreement and that his claims should have been brought as a derivative action on behalf of RM Property. This argument misconstrues the claims asserted by Razuki. Razuki seeks to enforce the Settlement Agreement and his oral partnership agreement. Razuki's claims are not that Malan and Hakim defrauded RM Property. Rather he alleges that Malan breached the Settlement Agreement and that Malan and Hakim otherwise engaged in illegal and fraudulent conduct to prevent Razuki from obtaining the benefits of his partnership with Malan. Contrary to Malan's assertion, these claims are not **[*60]** necessarily derivative and were properly brought by Razuki on his own behalf. (See *Schuster v. Gardner (2005) 127 Cal.App.4th 305, 312, 25 Cal. Rptr. 3d 468* [A "'*derivative* action [is] filed on *behalf of the corporation* for injury to the corporation for which it has failed or refused to sue.'"].)

V. Imminent Injury and Availability of Less Dramatic Relief

Malan and Hakim contend the court erred by determining the balance of harms favored Razuki and SoCal's request for a receiver. They primarily argue that events occurring after the appointment—the Production Facility's failure to obtain new clients—demonstrate why the trial court was incorrect in finding there was a risk to Razuki's interest during the pendency of this litigation. Malan also asserts there was no evidence of any risk of destruction to the businesses' operations or the property. Further, Malan and Hakim both contend that lesser remedies were available to protect Razuki's interests.

Razuki responds that the risk of harm to his interest was significant because ownership of the cannabis operations, in particular the property that was permitted for such operations, "is a unique asset that cannot easily be replicated or otherwise replaced with money damages. Specifically, an ownership or equitable **[*61]** interest in those businesses and related facilities also grants an interest in the licenses and [CUPs] which allow those marijuana businesses to operate legally in San Diego. As the number of such licenses is rigorously restricted, the ownership of those business is a unique and irreplaceable asset." Further, Razuki points to the cash nature of the businesses, which makes accounting for and after-the-fact tracing of profits particularly difficult. Because of these facts, Razuki contends the trial court did not abuse its discretion by finding that a receivership was necessary to protect his stake in the enterprise while his claims proceed through the court. We agree.

To appoint a receiver under *section 564, subdivision (b)(1)*, the trial court must determine whether the "property or fund is in danger of being lost, removed, or materially injured." "[T]he availability of other remedies does not, in and of itself, preclude the use of a receivership. (*Sibert v. Shaver [(1952)] 113 Cal.App.2d 19, 21, 247 P.2d 609*.) Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*City and County of San Francisco v. Daley (1993) 16 Cal.App.4th 734, 745, 20 Cal. Rptr. 2d 256*.)

Contrary to Malan and Hakim's assertions on appeal, at the time the trial court confirmed the receivership, **[*62]** there was substantial evidence presented by Razuki suggesting that his investment in the dispensary and production facility was in jeopardy as a result of defendants' actions. The court had before it competing claims of ownership by Razuki and SoCal, and at least one separate pending lawsuit to quiet title over the Dispensary property. In addition, the initial receiver appointment in July had resulted in allegations that Malan and his counsel had directed Dispensary employees to take significant amounts of cash from the businesses.

[21] Malan also relies on *Civil Code section 1550.5* (recognizing the lawfulness of certain medicinal and/or adult-use cannabis commercial activity) and the fact that the law did not take effect until January 1, 2018, almost two months after the Settlement Agreement was executed. Although the statute's existence may be a factor in determining the enforceability of the Settlement Agreement and/or the alleged oral agreement, it did not preclude the receiver appointment at this early stage of the litigation.

Other facts before the court also suggested the property itself was in jeopardy of destruction. For instance, SoCal submitted the affidavit of a witness who saw the illegal transportation of cannabis products to the Production Facility, potentially jeopardizing the facility's permit. Malan and Hakim argued that SoCal's employees were also jeopardizing the viability of the dispensary through their mismanagement. There were also competing claims on the valuable equipment in the production facility, and threats it would be sold or destroyed.

When the unique character of this real property is considered in conjunction with the erratic behavior of the various parties **[*63]** leading to the September 7 hearing, the trial court's determination that there was a significant risk of irreparable harm to these assets requiring a neutral third party to step in was not an abuse of its wide discretion. In addition, the all-cash nature of the Dispensary and Production Facility, combined with a specific claim that cash had already been misappropriated from the Dispensary without proper accounting, supported the trial court's conclusion there was a risk of irreparable harm to the assets during this litigation. (See *Moore v. Oberg (1943) 61 Cal.App.2d 216, 221-222, 142 P.2d 443* (*Moore*) ["So broad is the discretion of the trial judge that his order based upon facts concerning which reasonable minds might differ with respect to the necessity for the receivership will not be reversed. We cannot substitute our conclusion for that of the trial court made upon sufficient evidence even if we should be of the opinion that there was no danger of the loss or removal of, or other irreparable injury to, the assets of the joint venture. To justify our interference with the order confirming the appointment herein, it must be made clearly to appear that the order was an arbitrary exercise of power."].)

With respect to Malan and Hakim's argument **[*64]** that the receivership has harmed the assets since September 26, 2018, it is not this court's role to review the activity that took place after the appealed order. (*Bach v. County of Butte (1989) 215 Cal.App.3d 294, 306, 263 Cal. Rptr. 565* (*Bach*).) This information was not before the trial court when it confirmed Essary's appointment and thus is not a proper basis for reversal of the order.[22] Hakim also argues that the appointment was unnecessary because after July 10, the Production Facility had generated no profits, and thus there was nothing for the receiver to manage. This argument does not assist Hakim. Rather it highlights the contradictions that were facing the trial court, including Hakim's and Malan's assertions that Synergy had secured profitable contracts before Essary's appointment. The argument also casts doubt on appellants' assertions that the receiver is the reason for the facility's lack of profit.

In sum, the receivership was an appropriate remedy for the court to track the cash the parties stated was flowing, and that had flowed, through the two operations; control the parties' chaotic ownership disputes; and protect the real property jeopardized by the parties' conduct. While the other remedies appellants suggest might also have protected **[*65]** Razuki's interest, Malan and Hakim have not shown the court's decision to confirm the receiver was "an arbitrary exercise of power." (*Moore, supra, 61 Cal.App.2d at p. 222*.)

VI. Unclean Hands

A. Background

Finally, Malan and Hakim ask this court to overturn the September 26 order based on the federal criminal charges that Razuki now faces. In support of their argument, Malan and Hakim included in the Appellants' Appendix briefing and declarations for Hakim's May 8, 2019 "Ex Parte Application to Remove Receiver from [Production] Facility . . . ." These documents include Malan's declaration attaching the criminal complaint filed against Razuki in the Southern District of California, *United States of America v. Razuki*, case No. 3:18-mj-05915-MDD (S.D.Cal. 2018) and the related grand jury indictment. The probable cause statement accompanying the complaint describes an FBI sting operation in which two women who Malan describes as Razuki's employees, hired the FBI's confidential informant to kidnap and murder Malan.

The statement explains that one of the women, Sylvia Gonzalez, first met with the FBI informant on October 17, 2018, and at a subsequent meeting on November 5,

[22] For the same reason, Hakim's motion to augment the record to include subsequent reports of the receiver and related documentation is denied. (See *In re Marriage of Folb (1975) 53 Cal.App.3d 862, 877, 126 Cal. Rptr. 306*, disapproved on other grounds by *In re Marriage of Fonstein (1976) 17 Cal.3d 738, 131 Cal. Rptr. 873, 552 P.2d 1169*, ["But we must reiterate that matters occurring after judgment are generally not reviewable on appeal . . . . The trial court remains the more appropriate forum in which to litigate these subsequent developments."].)

2018, told the informant that she wanted to get rid of **[*66]** Malan because it looked like "they [we]re going to appeal" and Razuki "has a lot of money tied up right now, and he's paying attorney fees." The statement describes several additional meetings between the women and the informant where they discussed a plan to kidnap Malan and take him to Mexico where they would murder him. Razuki was alleged to be present at one meeting, but not directly involved in conversations concerning the murder plot.

According to the statement, Gonzalez contacted the informant on November 13, 2018, to tell him that Malan would be at the San Diego Superior Court that day and on November 15, 2018, the informant met with Razuki and told him that he "took care of it." During the November 15, 2018 meeting, the informant requested payment from Razuki, who told the informant to ask Gonzalez. Gonzalez, the other woman, and Razuki were all arrested over the course of the next day. The criminal complaint contains two charges against Razuki, conspiracy to kidnap and conspiracy to murder in a jurisdiction outside the United States.

Hakim also asserts that in June 2017 Razuki threatened "to burn down the Mira Este facility," when Hakim refused to lend Razuki the $518,000 in **[*67]** proceeds Hakim received from the cash-out refinance on that property.

B. Analysis

"The defense of unclean hands arises from the maxim, ""He who comes into Equity must come with clean hands."" [Citation.] The doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim. [Citations.] The defense is available in legal as well as equitable actions. [Citations.] Whether the doctrine of unclean hands applies is a question of fact." (*Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970, 978, 90 Cal. Rptr. 2d 743* (*Kendall-Jackson*).)

"Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient cause to invoke the doctrine. [Citations.] [¶] The misconduct that brings the unclean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. . . . The misconduct 'must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.'" **[*68]** (*Kendall-Jackson, supra, 76 Cal.App.4th at p. 979*.)

Without any question, the conduct alleged in the federal complaint as well as the allegation that Razuki threatened to burn down the Mira Este facility is powerful evidence that could form the basis for the unclean hands doctrine defense. Critically, however, none of this information was before the trial court at the time it entered the receivership order challenged in this appeal. Malan and Hakim do not dispute that the kidnap and murder conspiracy allegations first came to light in November 2018, almost two months after the issuance of the appealed order. Additionally, Hakim's only citation in the record to the threat he alleges Razuki made in 2017 to burn down the Production Facility is contained in his declaration in support of his May 8, 2019 ex parte application to remove the receiver, more than six months after the issuance of the appealed order.

This court's role is to evaluate the ruling that was appealed by Malan and Hakim, not events that came later and that were not considered by the trial court. Malan and Hakim present no basis for this court to consider this new information.[23] (See *Bach, supra, 215 Cal.App.3d at p. 306* ["It is elementary that an appellate court is confined in its review to the proceedings **[*69]** which took place in the trial court. [Citation.] Accordingly, when a matter was not tendered in the trial court, 'It is improper to set [it] forth in briefs or oral argument, and [it] is outside the scope of review.'"].) While the alleged criminal conduct is concerning, to say the least, it is not a proper basis for reversal by this court of the challenged receivership order.

DISPOSITION

The order is affirmed. Appellants to bear respondent's costs on appeal.

HALLER, J.

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[23] In his reply brief, Malan argues the timing of the conduct does not matter and quotes *Kendall-Jackson*, which states the general maxim that a plaintiff in equity "must come into court with clean hands, *and keep them clean*, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson, supra, 76 Cal.App.4th at p. 978*, italics added.) *Kendall-Jackson*, however, does not address the situation here, where conduct that was not before the trial court is used as the basis for a request that this court reverse the trial court's order.

WE CONCUR:

HUFFMAN, Acting P. J.

GUERRERO, J.

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RJN EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO- CENTRAL DIVISION

SALAM RAZUKI, an individual,

Plaintiff,

vs.

NINUS MALAN, an individual; CHRIS HAKIM, an individual; MONARCH MANAGEMENT CONSULTING, INC., a California corporation; SAN DIEGO UNITED HOLDINGS GROUP, LLC, a California limited liability company; FLIP MANAGEMENT, LLC, a California limited liability company; ROSELLE PROPERTIES, LLC, a California limited liability company; BALBOA AVE COOPERATIVE, a California nonprofit mutual benefit corporation; CALIFORNIA CANNABIS GROUP, a California nonprofit mutual benefit corporation; DEVILISH DELIGHTS, INC. a California nonprofit mutual benefit corporation; and DOES 1-100, inclusive;

Defendants.

CASE NO. 37-2018-00034229-CU-BC-CTL

DECLARATION OF GINA M. AUSTIN

[Imaged File]

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

I, Gina M. Austin, declare:

1. I am attorney admitted to practice before this Court and all California courts and, along with Tamara M. Leetham, represent defendant Ninus Malan ("Malan") in this matter. I make this declaration in support of Malan's ex parte application to vacate order appointing receiver. Unless otherwise stated, all facts testified to are within my personal knowledge and, if called as a witness, I would and could competently testify to them.

2. I am an expert in cannabis licensing and entitlement at the state and local levels and regularly speak on the topic across the nation.

3. I have represented Ninus Malan, San Diego United Holdings Group, Balboa Ave Cooperative, and California Cannabis Group in multiple matters in San Diego County Superior Court.

4. My firm also performs additional legal services for these defendants to include corporate transactions and structuring, land use entitlements and regulations related to cannabis, and state compliance related to cannabis.

5. On Tuesday July 17, 2018, I specially appeared in Judge Medel's department in response to an ex parte application by Salam Razuki to appoint a receiver and for a temporary restraining order in the instant litigation. The purpose of my special appearance was to inform the court that none of the defendants had been served, that our office had not been retained to represent any of the defendants in this matter, and request that the court set the matter for a proper noticed hearing after the defendants had been served. A true and correct copy of the transcript from that hearing is attached as Exhibit A and incorporated by reference.

6. Judge Medel summarily granted the application and Plaintiff's request to appoint Mr. Essary as the receiver. There was no discussion of the proposed order or any response from the court regarding the lack of notice, service, or harms that would create a need for immediate relief.

7. Outside the courtroom I asked opposing counsel to send me a courtesy copy of the order as soon as it was signed. I did not receive a courtesy copy of the order until late that evening.

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8. At approximately noon on July 17, 2018, Heidi Rising, the manager of a separate dispensary Golden State Greens and then contract operator of the Balboa dispensary, called me and informed me that the prior operators of the Balboa dispensary were outside and harassing customers and that the prior security guard was there brandishing a gun. Golden State Greens is a separate client of Austin Legal Group. I instructed Ms. Rising to call the police and drove up to the dispensary to meet with police when they arrived to explain the events that had happened in court earlier that morning.

9. At approximately 2pm, upon reviewing a copy of the register of actions in this case, I telephoned Mr. Essary to (i) request a copy of the order and the bond, (ii) discuss the issues in the case, and (iii) determine the process for moving forward. Mr. Essary informed me that he was going to immediately "take possession of all assets" including the dispensary and put the prior operator back in control of the dispensary. I informed him that I could not allow him to do that until the defendants had been served with an order. I specifically informed Mr. Essary that neither my office nor any of the defendants had been served with the court's order appointing the receiver. Mr. Essary informed me that he had years of experience and taken control of millions of dollars and would take possession of the dispensary immediately. In response to my objections that none of the parties had been served with the order or bond, Mr. Essary stated that he didn't have to serve anyone as he had a court order appointing him the receiver and that was enough.

10. Around 3 pm on July 17th, Heidi rising telephoned me because a man was pounding on the dispensary's door and demanding he be let in. Heidi did not feel safe leaving the dispensary. The man with a gun was outside, and people working with him were sitting on her car. I drove to the dispensary to pick her up and help her escape.

11. When I arrived at the dispensary I was speaking with Ms. Rising on the phone to determine where to pick her up. She stated that the people outside were trying to break down the front door and we agreed I would pick her and two other Golden State Greens employees up in the back of the dispensary. When I arrived the people outside had just broken down the front door of the dispensary and there were people running around the corner of the dispensary towards

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my car as if to attack us. Out of fear, as soon as Heidi and her two other associates were in my car, I drove away as fast as I could. We were chased by the man who had been at the dispensary earlier in the day brandishing his gun.

12. Despite the fact that none of the defendants had been served with the court's order, on July 19, 2018 I emailed Mr. Essary and informed him of the issues I believed to need immediate attention. A true and correct copy of this email is attached as Exhibit I to the Declaration of Tamara M. Leetham. In a response email on July 19, 2018, Mr. Essary acknowledged receipt of my email and stated that he had retained an attorney Mr. Griswold.

13. I am informed and believe that either Mr. Essary or Mr. Griswold or both have taken possession of the Balboa dispensary and have placed the prior operator SoCal Building Ventures as operator.

14. Allowing Mr. Essary to control the dispensary is a violation of State law. The Bureau of Cannabis Control ("BCC") requires all owners to submit detailed information to the BCC as part of the licensing process. An owner is defined as:

> (1) A person with an aggregate ownership interest of 20 percent or more in the person applying for a license or a licensee, unless the interest is solely a security, lien, or encumbrance.
> (2) The chief executive officer of a nonprofit or other entity.
> (3) A member of the board of directors of a nonprofit.
> (4) ***An individual who will be participating in the direction, control, or management of the person applying for a license*** [emphasis added]**.**

Cal. Bus. Prof Code § 26001(al).

15. Based upon the definition of an Owner, Mr. Essary would be deemed by the BCC to be an owner and would have to submit all the requisite information required by Title 16 Chapter 42 of the California Code of Regulations before he would be allowed to legally take possession and control of the Balboa dispensary.

16. Based upon the definition of Owner, SoCal Building Ventures would also be deemed an owner. I am informed and believe that its re-appointment as operator of the Balboa dispensary is also a violation of state law as none of the CCR Title 16 information has been submitted to the BCC.

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17. Allowing Mr. Essary to control the dispensary is also a violation of the San Diego Municipal Code ("SDMC"). The SDMC requires all *responsible persons* to have a background checks and a valid Marijuana Outlet Operating Permit. (SDMC Article 2, Division 15.) A true and correct copy of SDMC Article 2, Division 15 is attached hereto as Exhibit B.

18. The SDMC defines *Responsible Person* as "a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term Responsible Person includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property." (SDMC §11.0210). The term also includes "a permittee and each person upon whom a duty, requirement or obligation is imposed by this Article, or who is otherwise responsible for the operation, management, direction, or policy of a police-regulated business. It also includes an employee who is in apparent charge of the premises." (SDMC 33.0201.)

19. Mr. Essary and SoCal Building Ventures are responsible persons and are in violation of the SDMC for failure to obtain the requisite background checks and permits.

20. I am informed and believe that SoCal Building Ventures has caused the Balboa dispensary to be in violation of the SDMC and the City of San Diego has issued various notices of violation that if left uncured will threaten the ability of Balboa to maintain its Conditional Use Permit to operate. A true and correct copy of the current code enforcement action pending against the Balboa dispensary is attached hereto as Exhibit C.

21. I am informed and believe that upon the appointment of Mr. Essary as the receiver the Balboa dispensary has engaged in additional violations of the SDMC by failing to provide two security guards during operating hours and one security guard during non-operating hours.

22. The Balboa dispensary is currently in the process of a compliance and tax audit by the City of San Diego. The City has demanded responses by Friday August 3rd. Failure to provide these responses included financial data from the databases that are in the exclusive control of Mr. Essary and/or SoCal Building Ventures could cause irreparable harm and a loss of the Balboa dispensary's right to operate.

23. There are two hearings scheduled before the Hearing Officer for the City of San

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Diego for land use entitlements for the properties located at 8859 Balboa ("8859 CUP") and 9212 Mira Este ("9212 CUP"). These hearings are of critical importance to the future rights and privileges of those two properties. Approval by the Hearing Officer at each of these hearings requires specific knowledge and skills of the City of San Diego licensing process and historical facts that neither Mr. Essary or SoCal Building Ventures has.

24. The 8859 CUP is scheduled for a public hearing on August 15, 2018. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or if they are not adequately represented. The City of San Diego is only issuing 40 permits. If the 8859 CUP is not heard by the Hearing Office on August 15, 2018, it is possible that the 8859 CUP would be unable to be approved in the future.

25. The 9212 CUP is scheduled for a public hearing in early September. Ninus Malan and the various entities that he is a member of will be irreparably harmed if this hearing is delayed or they are not adequately represented. Due to the permit number limitations, if the 9212 CUP is not heard by the Hearing Office in early September, it is possible that the 9212 CUP would be unable to be approved in the future as there are more than 60 applications for only 40 permits.

26. Our office has been responsible for processing the state applications related to cannabis operations at both the Balboa dispensary and 9212 Mira Este. Processing of these applications requires specific knowledge and skill of the state licensing requirements as well as the current state cannabis rules and regulations. An immediate response is required by the BCC from the Balboa dispensary and the Mira Este operations. It is my opinion that neither Mr. Griswold nor Mr. Essary have the knowledge and skills relevant to state cannabis law to effectively process these applications. Failure to immediately respond to the BCC and California Department of Public Health will likely jeopardize the permits and the ability to legally operate at these locations.

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I declare under penalty of perjury under California state law that the foregoing is true and correct. Executed in San Diego, California, on July 30, 2018.

Gina M. Austin

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EXHIBIT A

EXHIBIT A

In The Superior Court Of The State Of California
In And For The County Of San Diego
Department 66; Hon. KENNETH MEDEL, Judge

SALAM RAZUKI,
Plaintiff,
vs. Case No. 37-18-00034229
NINUS MALAN
Defendants.

Reporter's Transcript
JULY 17, 2018

Appearances:

For the Plaintiff: STEVEN ELIA, ESQ.
2221 CAMINO DEL RIO S. #207
SAN DIEGO, CALIFORNIA 92108

For the Defendant: GINA AUSTIN, ESQ.
3990 OLD TOWN AVENUE, A-112
SAN DIEGO, CALIFORNIA 92110

Darla Kmety, RPR, CSR 12956
Official Court Reporter
San Diego Superior Court
San Diego, California 92101

JULY 17, 2018; San Diego, California; 1:30 P.M.

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THE COURT: Item 4. Razuki versus Malan.

MR. ELIA: Good morning. Steven Elia on behalf of Mr. Razuki.

MS. GRIFFIN: Maura Griffin on behalf of plaintiff.

THE COURT: Mr. Elia.

MS. AUSTIN: Your Honor? Gina Austin specially appearing on behalf of all defendants.

THE COURT: When you say "specially," what does that mean?

MS. AUSTIN: It means we're here only to oppose this and protect their interests. They have been served. We are not retained as counsel yet for this matter.

THE COURT: All right. Counsel, tell me -- flush this out for me. I need a little more history. I only had a peripheral chance to read your papers.

MR. ELIA: Yes, your Honor. It's a lengthy set of facts. I'll do my best to summarize.

This case is about three properties that operate three legal dispensaries: There's a retail location at Balboa. There's a manufacturing, cultivation at the Murriesta. And there is a third location which hasn't engage in operations at this moment. We're really dealing with the two operations.

My client invested millions of dollars. Her client invested nothing. If he did, it's a nominal

amount.

THE COURT: What was the role of her client?

MR. ELIA: To be the operator. But the deal was that my client would be 75 percent owner; her client would be 25 percent owner after my client recouped his investment, which hasn't happened.

THE COURT: Okay.

MR. ELIA: This oral agreement was memorialized into a settlement agreement where both sides were represented by an attorney. They met several times as Exhibit D. It's very clear as to what the ownership of the assets are. There's no ambiguity.

At this point, Mr. Malan, who is the defendant, and Mr. Hakim want to cut my client out of the deal completely. Essentially, they want to steal these operations. So in October of 2017, they brought in a management company, a professional management company, that would operate these operations. Counsel is here on behalf of SoCal. And they entered into three agreements for the three locations.

SoCal has paid about $2.6 million so far. That money -- some of that money was supposed -- probably about a million dollars of it -- was supposed to go to an entity called Flip. My client was a 50 percent -- I'm sorry -- 75 percent owner, and her client would be a 25 percent owner, as I previously stated.

What Mr. Malan did, what Mr. Hakim did is they set up another entity called Monarch. Didn't tell my

client about it and funneled over a million dollars of that amount.

Now, under these three management agreements, SoCal was supposed to pay a hundred thousand dollars a month. So 50,000 per location. It's a substantial amount of money we're talking about. This was since October of 2017.

Now, when SoCal eventually found out about a month ago that Mr. Razuki, my client, had a substantial interest in these operations, they sent a letter over to her client saying, What is this all about? Tell us why you didn't tell us Mr. Razuki had this ownership interest. Then they withhold payments.

So what her client does is he locks them out. Resorts to self-help, locks them out. Although they've got a million dollars worth of machinery at the cultivation location. Locks him out. Locks him out of the retail establishment. Brings in a new operator.

SoCal has already paid million of dollars, and her client has granted options under this agreement. They've paid $225,000 for these options to purchase half of these operations, and they just locked him out and brought in a new operator.

They did this to conceal the fact and to cut my client out of the transaction. The new operator has no idea that my client owns 75 percent of these operations.

Now, we're asking for a receiver because these are extraordinary circumstances and conduct by the

defendants. All we're asking for is to preserve the status quo that we've had the last ten months with the defendants. We're just asking for the appointment of a receiver that would take over the marijuana operations, temporary restraining order so they don't commit waste. The problem, your Honor --

THE COURT: What underlying suit do you have?

MR. ELIA: The complaint?

THE COURT: Yeah.

MR. ELIA: It's basically to enforce the settlement agreement that's attached as Exhibit D.

THE COURT: There was a settlement in this case?

MR. ELIA: There was a settlement.

THE COURT: It's not agree -- they agreed to.

MR. ELIA: Yes. Exhibit D to our moving papers. That and for damages of the millions of dollars their clients have taken not told us about. They told us, Look. They're not really paying. In fact, they did pay. They're paying a hundred thousand dollars a month. They paid 225,000 for options we never knew about. All this money needs to be accounted for.

We're not asking for any harm to anybody. We just want a receiver to take over so that we can stop the wasting. We need some internal controls so that her clients don't continue to steal and put in a new operator that is eventually going to end up joining this complaint, and then we have a multiplicity of lawsuits.

THE COURT: You want an injunction.

MR. EILA: Yes, your Honor.

THE COURT: The injunction it to maintain the status quo.

MR. ELIA: Maintain the status quo, to not waste. And one of things, your Honor, her client is the record owner on the LLCs; however, the settlement agreement says no matter who owns it, the deal is 75/25. He's free to sell the properties.

In fact, when we look at the management agreements, he's sold furniture, fixtures, and equipment that belonged to my client. He can't sell something that he doesn't own. There's irreparable harm. He's free to sell -- transfer the properties tomorrow. My client is guarantor on millions of dollar of real estate loans on this.

THE COURT: Another party wanted to intervene today.

MR. ELIA: Yes, your Honor. Rob Fuller. We filed our motion today ex parte.

THE COURT: You did that today without a --

MR. ELIA: We filed ex parte before 10:00 yesterday. Gave notice. Should have been with the court.

THE COURT: I don't have it, but isn't that supposed to be a full-blown motion? Can I do that on an ex parte basis?

MR. ELIA: I believe it's appropriate for ex parte under the rules. We cite that in our brief.

THE COURT: Counsel?

MS. AUSTIN: Good morning, your Honor. As I mentioned, I am specially appearing on behalf of all the defendants. None of the defendants have been served with either the motion or the complaint intervention, nor the underlying complaints for this ex parte. We're here to Protect their rights.

THE COURT: You have not served them?

MR. ELIA: Your Honor, we haven't located them, but I did speak to their counsel on Friday. He told me at 10:00 a.m. on Friday he downloaded the complaint. He represented he represents both sides and that I asked him -- I had a 15-minute conversation with him, fully explained everything. I told him -- asked him to please let your clients know, and he assured me that he would.

MS. AUSTIN: Your Honor, the person he spoke to is not a litigation counsel. He does, as I understand it, he does represent some of the defendants in some business transactional work but does not represent them in this. I don't know the nature of that nor do I --

THE COURT: Did you not know them beforehand?

MS. AUSTIN: Did I not know who?

THE COURT: Did you have no relationship with the moving parties beforehand?

MS. AUSTIN: No. I only have relationship with -- no. I have relationship with Ninus Malan in other matters, so we may end up representing them, but we haven't done conflicts checks.

We have another attorney we're talking to, George Fleming, who is looking at but hasn't done conflicts checks. We're not even sure the nature of the complaint. The notice we received for their ex parte which was in email on Friday, didn't even tell us the nature of the ex parte.

THE COURT: All right.

MS. GRIFFIN: That's the Number 1 thing is we haven't been served. The second thing is there's no urgency here. I briefly read the papers as we were sitting out there -- or sitting here waiting, listening and there's no urgency. What is going on today has been going on for -- Ninus Malan having control of the entities, which he's entitled to, has been going on a very long time. There's no evidence of any urgency in this particular matter.

And I think most in importantly here is that as I skimmed through the declaration, which is Mr. Razuki, which is all hearsay, none of it shows just why there is a need to change anything today.

If we were able to get into the factual matter of this, we -- you would get evidence presented to you that would show that, in fact, SoCal Builders was -- the reason that they had to be terminated was because of mismanagement, was because the HOA was looking at revoking the permit, because they weren't doing proper permits under the state licensing.

I don't want to get into all the merits. We

don't represent them yet. We don't know that we will.

THE COURT: Okay. Thank you. Anything further, counsel?

MR. FULLER: Yes, your Honor. I found the citation. Code of Civil Procedure 387(c) that says it can be brought ex parte.

THE COURT: I'm going to grant your motion to intervene.

MR. FULLER: Thank you, your Honor.

THE COURT: On yours, the only thing is the receivership?

MR. FULLER: May I address that briefly?

THE COURT: Yes.

MR. FULLER: We believe that we have a very long, detailed authored dispute resolution clause in our contracts.

THE COURT: Detailed --

MR. FULLER: This seller undercut. We're in the position we've got until next Tuesday, July 24, to make $170,000 of payments. Right now, we have the unavailable task to decide whether to give to Mr. Malan and Mr. Hakim, or whether Mr. Razuki should get a hundred percent or 75 percent of that. We don't know where to put that money. We feel more comfortable giving it to the receiver.

MR. ELIA: Your Honor, I brought the receiver in court, Mr. Essary. I've had Judge Sturgeon appoint sua sponte without anyone asking for it. He's trusted by

other judges here. I know some judges have reservations with receiver, but Mr. Essary would be appropriate for this case.

MS. AUSTIN: Your Honor, we haven't seen briefing on this. We don't know anything about what is going on. If they don't know where to put the money, we suggest they interplead with the court.

THE COURT: All right. I'm going to grant the relief requested. The injunction is granted. Receivership is appointed. Hope you all can sort this out. I would have some really good communication with people. See if you can work out --

MS. AUSTIN: Your Honor, you're granting the receivership? We're not even served. How are we going -- we don't even know if this is the case.

THE COURT: Well, the order is granted at this point.

MR. ELIA: Thank you, your Honor. Appreciate it.

[Whereupon the proceeding concluded.]

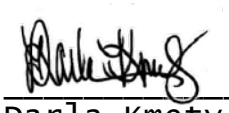
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

I, Darla Kmety, Court-Approved Official Pro Tem Reporter for the Superior Court of the State of California, in and for the County of San Diego, do hereby certify:

That as such reporter, I reported in machine shorthand the proceedings held in the foregoing case;

That my notes were transcribed into typewriting under my direction and the proceedings held on July 17, 2018, contained within pages 1 through 10, are a true and correct transcription.

This Day 20th of July 2018



Darla Kmety, CSR 12956

EXHIBIT B

EXHIBIT B

Article 2: Health Regulated Businesses and Activities

Division 15: Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana

("Medical Marijuana Consumer Cooperatives" added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Medical Marijuana Consumer Cooperatives" to "Marijuana Outlets" on 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Marijuana Outlets" to "Marijuana Outlets, Marijuana Production Facilities, and Transportation of Marijuana" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing but strictly regulating the retail sale of marijuana at *marijuana outlets*, and the raising, harvesting, processing, wholesaling, distributing, storing, and producing of *marijuana* and *marijuana* products at *marijuana production facilities* in accordance with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the cultivation, sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7-11362.83), the Medicinal and Adult-Use Cannabis Regulation and Safety Act, and the Adult Use of Marijuana Act.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as cannabis in California Business and Professions Code section 26001.

Marijuana outlet means a retail establishment operating with a Conditional Use Permit in accordance with section 141.0504, where *marijuana*, *marijuana* products, and *marijuana* accessories, as defined in California Health and Safety Code sections 11018, 11018.1, and 11018.2, respectively, are sold to the public in accordance with dispensary or retailer licensing requirements contained in the California Business and Professions Code sections governing *marijuana* and *medical marijuana*. A *marijuana outlet* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

Marijuana production facility means individual or combined uses, operating with a Conditional Use Permit in accordance with section 141.1004, engaged in the agricultural raising, harvesting, and processing of *marijuana*; wholesale distribution and storage of *marijuana* and *marijuana* products; and production of goods from *marijuana* and *marijuana* products consistent with the requirements of State of California Statutes and the California Departments of Food and Agriculture, Consumer Affairs, and Public Health regulations.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *marijuana outlet* or a *marijuana production facility*. It also includes an employee who is in apparent charge of a *marijuana outlet* or a *marijuana production facility*.

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1504 Marijuana Outlets and Marijuana Production Facilities–Permit Required

(a) It is unlawful for any person to operate any *marijuana outlet* without a *Marijuana Outlet* Permit or a *marijuana production facility* without a *Marijuana Production Facility* Permit issued pursuant to this Division.

(b) *Marijuana outlets* and *marijuana production facilities* shall designate one officer or manager to act as a responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *marijuana outlet* or a *marijuana production facility*.

(c) The issuance of a *Marijuana Outlet* Permit or *Marijuana Production Facility* Permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.

(d) A permit applicant must obtain a Conditional Use Permit as required by sections 141.0504 and 141.1004 prior to obtaining a permit under this Division.

(e) Applications for *Marijuana Outlet* Permits and *Marijuana Production Facility* Permits shall be filed with the City Manager.

(f) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.

(g) *Marijuana Outlet* Permits and *Marijuana Production Facility* Permits issued pursuant to this Division shall be valid for one year.

(h) An application for a *Marijuana Outlet* Permit or a *Marijuana Production Facility* Permit shall be denied if the applicant has had any permit issued pursuant to this Division revoked by the City Manager within the past twelve months of the date of application.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Permit Required" to "Outlets–Permit Required" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Permit Required" to "Marijuana Outlets and Marijuana Production Facilities–Permit Required" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1505 Exemptions

(a) This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.

(b) This Division does not apply to the cultivation of six or fewer *marijuana* plants within a private residence or an accessory structure to that residence that is fully enclosed and secure. For the purposes of this section, a private residence means a house, apartment unit, mobile home, or other similar dwelling.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)

§42.1506 Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *marijuana outlets* and *marijuana production facilities*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Retitled from "Cooperatives–Cost Recovery Fees" to "Outlets–Cost Recovery Fees" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Cost Recovery Fees" to "Marijuana Outlets and Marijuana Production Facilities–Cost Recovery Fees" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1507 Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions

(a) Prior to acting as a *responsible person* in a *marijuana outlet* or a *marijuana production facility*, all persons shall undergo fingerprinting. The fingerprints shall be provided to and kept on file with the City.

(b) The City shall conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility*.

A conviction is complete upon entry of judgment upon a finding of guilty, or upon entry of a plea of guilty, or upon entry of a plea of nolo contendere or "no contest," regardless of the pendency of any appeal, or expungement pursuant to California Penal Code section 1203.4, 1203.4a, or 1203.41.

(c) It is unlawful for any *responsible person* to act as a *responsible person* for a *marijuana outlet* or a *marijuana production facility* if he or she:

(1) fails to provide their fingerprints to the City; or

(2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.

(d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

(e) A *responsible person* who is convicted of a *violent felony* or crime of moral turpitude shall report the conviction to the City Manager within 48 hours.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Background Checks" to "Outlets– Background Checks" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Background Checks" to "Marijuana Outlets and Marijuana Production Facilities–Background Checks and Reporting Convictions" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1508 Marijuana Outlets and Marijuana Production Facilities–Operational Requirements

(a) Verification and Documentation

A *marijuana outlet* and a *marijuana production facility* shall maintain and provide upon request by the City a current list of all *responsible persons.*

(b) Age Limitations

(1) No person under the age of twenty-one is allowed at or in any *marijuana outlet* or *marijuana production facility* unless the person is a *qualified patient* or *state identification card* holder, and if under the age of eighteen, is accompanied by a parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

(2) No person under the age of twenty-one may be employed by or act as a *responsible person* on behalf of a *marijuana outlet* or a *marijuana production facility*.

(Retitled from "Cooperatives–Verification and Documentation" to "Cooperatives–Operational Requirements" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)
(Retitled from "Cooperatives–Operational Requirements" to "Outlets–Operational Requirements" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
(Retitled from "Outlets–Operational Requirements" to "Marijuana Outlets and Marijuana Production Facilities–Operational Requirements" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1509 Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit

(a) In addition to any penalties and remedies provided by law, and any other bases for regulatory action provided by law, a *Marijuana Outlet* Permit and a *Marijuana Production Facility* Permit are subject to regulatory actions for the following reasons:

(1) non-compliance with this Division or any condition of this permit;

(2) conviction of any crime which would have been grounds for denial of the permit;

(3) failure to take corrective action after timely written notice of a violation;

(4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation; or

(5) violation of any state or local law or regulation pertaining to the business.

(b) Regulatory action includes the following:

(1) Issuance of a verbal warning;

(2) Issuance of a written warning;

(3) Issuance of a notice of violation;

(4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

(5) Suspension of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit; or

(6) Revocation of the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit.

(c) Written notice of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(b).

(d) A request for an appeal hearing of the regulatory actions taken pursuant to section 42.1509(b)(2) through (b)(6) may be made by the responsible managing officer.

(e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.

(f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.

(g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.

(h) The hearing shall be conducted by a hearing officer provided by the City Manager.

(i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.

(j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Marijuana Outlet* Permit or the *Marijuana Production Facility* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

(Retitled from "Cooperatives–Not-for-Profit" to "Cooperatives-Regulatory Actions on Permit" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

("Retitled from "Cooperatives–Regulatory Actions on Permit" to "Outlets–Regulatory Actions on Permit" and amended 2-22-2017 by O-20795 N.S.; effective 4-12-2017.)
("Retitled from "Outlets–Regulatory Actions on Permit" to "Marijuana Outlets and Marijuana Production Facilities–Regulatory Actions on Permit" and amended 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

§42.1510 Transportation

The transportation of *marijuana* and *marijuana* products between facilities licensed by the State of California pursuant to Business and Professions Code, Division 10, is permitted.

("Transportation" added 10-17-2017 by O-20858 N.S.; effective 11-16-2017.)

EXHIBIT C

EXHIBIT C

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Search Applications

Record CE-0501875:

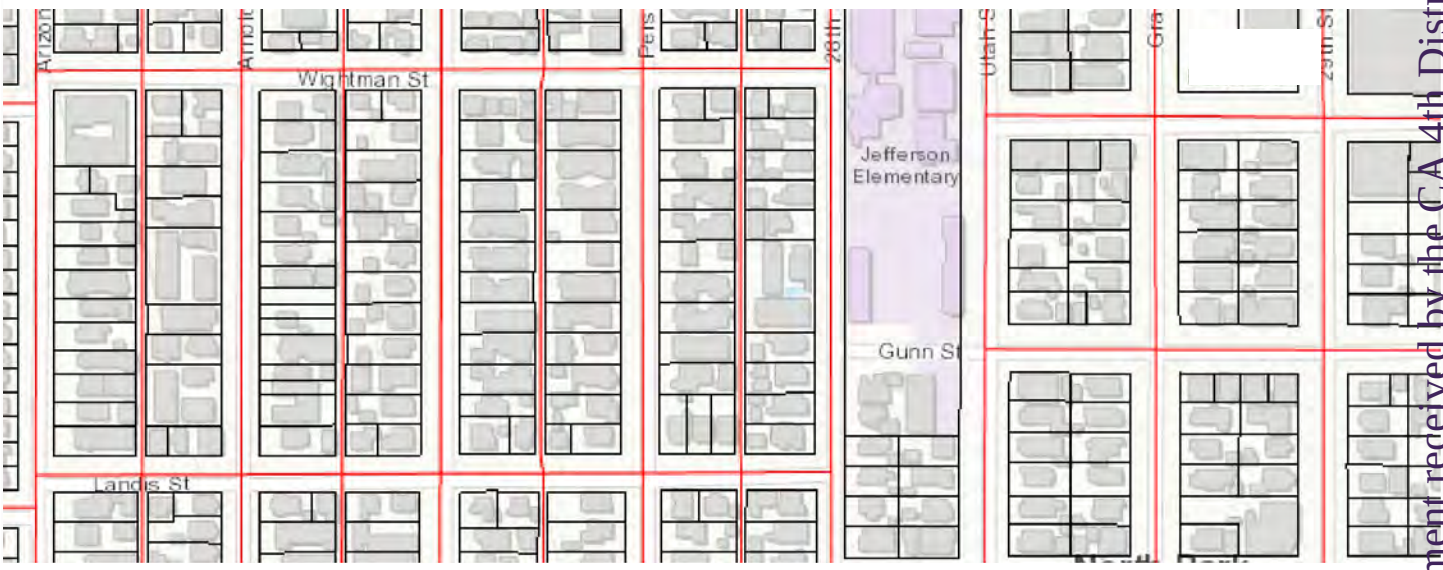
Complaint

Record Status: Active Enforcement

Record Info

Work Location

8863 Balboa Av
E
San Diego CA 92123



Record Details

Project Description:

Zoning-Discretionary Permit Violations
Online - SMR "RLS- CUP Violations. Signage electrical and potential others. Site Visit conducted at MO. Met with Manager (James) who stated only one security guard, new signage seen which some include electrical. No permits seen in PTS."

Owner:

SAN DIEGO UNITED HOLDINGS GROUP LLC
7977 Broadway
Lemon Grove Ca
Lemon Grove CA 91945

More Details

- Application Information
- Parcel Information

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Home DSD Permits DSD Code Enforcement

Search Applications

Record CE-0501875:

Complaint

Record Status: Active Enforcement

Record Info

Processing Status

Case Opened

Due on 06/04/2018, assigned to TBD
Marked as Assigned on 06/05/2018 by Rowdy Sperry

Prep Research

Due on 06/05/2018, assigned to Rowdy Sperry
Marked as Ready for Investigator Action on 06/05/2018 by Rowdy Sperry

Due on 06/05/2018, assigned to TBD
Marked as Research Complete on 06/05/2018 by Rowdy Sperry

Investigator Action

Due on 06/05/2018, assigned to Rowdy Sperry
Marked as Civil Penalty Notice and Order on 06/05/2018 by Rowdy Sperry

*Due on **06/05/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/05/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/06/2018** by **Lisa Poston***

---

*Due on **06/05/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/06/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/07/2018** by **Joana Flores***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/07/2018** by **Rowdy Sperry***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/15/2018** by **Crystal Andrade***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **06/15/2018** by **Crystal Andrade***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **07/03/2018** by **Amalia Ontiveros***

---

*Due on **06/11/2018**, assigned to **Rowdy Sperry***
*Marked as **Note** on **07/03/2018** by **Amalia Ontiveros***

---

*Due on **07/13/2018**, assigned to **Denney J Bryan***
*Marked as **TBD** on **TBD** by **TBD***

Closed

RJN EXHIBIT 3

Geraci vs. Cotton, et al.

Reporter's Transcript of Proceedings

July 08, 2019

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION
Department 73 Hon. Joel R. Wohlfeil

LARRY GERACI, an individual,)
Plaintiff,)
vs.) 37-2017-00010073-CU-BC-CTL
DARRYL COTTON, an individual;)
and DOES 1 through 10,)
inclusive,)
Defendants.)
_____)
AND RELATED CROSS-ACTION.)
_____)

Reporter's Transcript of Proceedings
JULY 8, 2019

Reported By:
Margaret A. Smith,
CSR 9733, RPR, CRR
Certified Shorthand Reporter
Job No. 10057774

Q What if someone has had illegal operations that have resulted in a lawsuits on the property, illegal principals?

A So in different jurisdictions, it's different. It's different. But if we're talking about the City of San Diego -- the state only makes you write a rehabilitation plan. They don't preclude you from operating. So you can have a misdemeanor -- and you have to disclose them all. So you have to disclose your -- if you've got a DUI, if you had some petty theft as a teenager or, I guess, over 18, if you -- and we see all of these things. And they simply -- you disclose it, and then you write a rehabilitation to the state, and the state says, okay, here you go.

Q So does the City care if someone has been sanctioned for illegal commercial cannabis activity?

MR. WEINSTEIN: Objection. Vague as phrased.

THE COURT: Overruled.

THE WITNESS: Does the City care if somebody has been sanctioned? Yes and no because it just depends on what that was. If that -- if there was -- Urban League had a perfect example. Wilson had been sanctioned for prior activity, and at the time when they first started those back in 2009, there was a -- phrasing in the -- in the settlement agreement that said you cannot conduct any cannabis activity unless amended by the Court. And he was still awarded a dispensary. And he ultimately did get it amended, the -- the

judgment or the stipulation amended to say no illegal cannabis activity.

So does the City care? I don't know how to answer that.

BY MR. AUSTIN:

Q All right. So it would be fair to say that the first goal of the regulating agencies in the city and the state is to protect the community and keep these types of individuals who had had illegal activity -- illegal cannabis activity going on, the goal would be to keep the public safe?

A I don't understand that question. Can you rephrase it?

Q No. Cancel that. Sorry. Strike that.

So on the 6176 property, Mr. Geraci's name was not used on the CUP application. Correct?

A That's correct.

Q And was the reason because of his tax business? Is that what you were told?

A I don't know if I was told.

Q Were you given a reason why Rebecca Berry would be used as the agent?

A I -- I don't recall if I was or if I wasn't. I'm trying to think back. I -- I -- I don't know if it was his tax business or -- you know, every year things loosen up a little bit, and there's been a -- always been a fear of federal enforcement. And so I don't remember the exact reason right now.

Q Are you aware that Mr. Geraci has been sanctioned for illegal cannabis activity on three occasions for owning property in which illegal marijuana principals were housed?

A No.

Q You're not aware of that?

A No.

Q Did you do any type of -- actually, have you worked with Mr. Geraci on any project other than the 6176 CUP?

A I'm not sure I can answer that for client privilege. I know he waived with regard to this. If someone could instruct me whether or not it's been waived to everything, that would be helpful.

MR. WEINSTEIN: Waived, your Honor.

THE COURT: I'm sorry?

MR. WEINSTEIN: We will waive the privilege.

THE WITNESS: Okay. Yes. I did work with him on -- working on some other land use entitlement projects.

BY MR. AUSTIN:

Q Were those marijuana related?

A They were not.

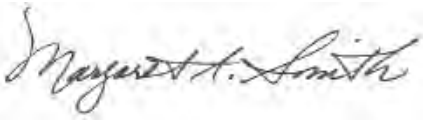
Q So in the forms that we saw up on the board, you said that Rebecca Berry's name was all that was required because the -- any CUP runs with the land. Correct?

A That's correct.

I, Margaret A. Smith, a Certified Shorthand Reporter, No. 9733, State of California, RPR, CRR, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages number from 1 to 236, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on July 8, 2019.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of July 2019.



Margaret A. Smith, CSR No. 9733, RPR, CRR

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION ONE

AMY SHERLOCK, an individual, Minors T.S. and S.S., Andrew Flores, an Individual, Plaintiffs and Appellants, v. GINA AUSTIN, an individual, Austin Legal Group, a Professional Corporation, Defendants and Respondents.	Court of Appeal Case No.: D081109 San Diego County Superior Court Case No.: 37-2021-0050889-CU-AT-CTL

Appeal from the Order by the Honorable James A. Mangione, Judge of the Superior Court of California, County of San Diego, Entered on August 12, 2022 Granting Defendant's/Respondent's Anti-SLAPP Motion.

APPELLANTS' APPENDIX – VOLUME 1 (0001-0259)

Andrew Flores (SBN:272958)
Law Office of Andrew Flores
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San Diego, CA 92101
Afloreslaw@gmail.com
In Pro Se, and Attorney for Plaintiff and Appellant
Amy Sherlock, and Minors T.S. and S.S

CHRONOLOGICAL INDEX [CRC 8.124]

Document Name	**Filed/Entered**	**Page Nos.**
Plaintiff's First Amended Complaint	December 22, 2022	0002-0098
Defendants Gina M. Austin and Austin Legal Group's Notice of Motion and Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 (ANTI-SLAPP STATUTE)	June 16, 2022	0100-0216
Plaintiff's Opposition to Gina M. Austin and Austin Legal Group's Special Motion to Strike Plaintiff's First Amended Complaint	July 25, 2022	0218-0241
Defendant Gina M. Austin and Austin Legal Group's Reply to Plaintiffs Opposition to Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Section 425.16 (ANTI-SLAPP STATUTE)	July 29, 2022	0243-0251
Order Granting Defendant's Motion to Strike	August 12, 2022	0253-0254
Notice of Appeal	September 1, 2022	0256-0259

EXHIBIT 1

ANDREW FLORES (State Bar Number 272958)
Law Office of Andrew Flores
945 4th Avenue, Suite 412
San Diego, CA 92101
Telephone: 619.256.1556
Facsimile: 619.274.8253
Andrew@FloresLegal.Pro

Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPRIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC., a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-0050889-CU-AT-CTL

FIRST AMENDED COMPLAINT FOR:

1. CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (Bus. & Prof. Code § §§ 16720 *et seq*.);
2. CONVERSION;
3. CIVIL CONSPIRACY;
4. DECLARATORY RELIEF
5. UNFAIR COMPETITION AND UNLAWFUL BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq*.); AND
6. DECLARATORY RELIEF,
7. CIVIL CONSPIRACY.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Amy Sherlock, Minors T.S. and S.S., Christopher Williams, and Andrew Flores, upon information and belief, allege as follows:

INTRODUCTION

1. This case arises from the concerted effort of a small group of wealthy individuals and their agents (the "Enterprise") that have conspired to create an unlawful monopoly in the cannabis market (the "Antitrust Conspiracy") in the City and County of San Diego.

2. The Enterprise includes attorneys from multiple law firms that are used to create the appearance of competition and legitimacy, while in reality the attorneys conspire against some of their own non-Enterprise clients to ensure the acquisition of the limited number of cannabis conditional use permits ("CUPs")[1] available in the City and County go to principals of the Enterprise.

3. At least some of the principals of the Enterprise have a history of being sanctioned for unlicensed commercial cannabis operations (i.e., illegal black-market dispensaries). Consequently, as a matter of law, they cannot own a cannabis CUP for a period of three years from the date of their last sanction. However, these individuals are wealthy and are able to the hire attorneys, political lobbyists, and other professionals to navigate the heavily regulated cannabis licensing process and acquire CUPs illegally.

4. The defining illegal act of the Enterprise is the acquisition of CUPs for its principals through the use of proxies - who do not disclose the principals as the true owners of the CUP applied for and acquired - in order to avoid disclosure laws that would mandate their applications be denied because of the principals' prior sanctions (the "Proxy Practice").

5. The unlawful acts taken by the Enterprise in furtherance of the Antitrust Conspiracy include "sham" litigation[2] and acts and threats of violence against potential competitors and witnesses.

6. Plaintiffs had or would have had interests in CUPs issued in the City and County of San Diego but-for the illegal acts of the Enterprise that were taken in furtherance of the Antitrust Conspiracy.

---

[1] "[A] conditional use permit grants an owner permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right but only upon issuance of the permit." *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1006.

[2] "Sham" litigation is defined as an action that is objectively baseless and brought not to accomplish the purported object of the litigation but to harass or impede a competitor. *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 61.

7. This action focuses on the Enterprise's unlawful acts in acquiring four CUPs: (i) the Ramona CUP,[3] (ii) the Balboa CUP,[4] (iii) the Federal CUP,[5] and (iv) the Lemon Grove CUP.[6]

JURISDICTION AND VENUE

8. Defendants are subject to the jurisdiction of this Court by virtue of their business dealings and transactions in California and by having caused injuries within the City and County of San Diego.

9. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10. Plaintiff's claims for violations of Business & Professions Code § 16720 *et seq.*, arise exclusively under the laws of the State of California, do not arise under federal law, are not preempted by federal law, and do not challenge conduct within any federal agency's exclusive domain.

10. Venue is proper in this county because the acts taken by defendants were taken within the County of San Diego and the CUPs at issue in this action were issued at real property within the County of San Diego.

PARTIES

11. Plaintiff AMY SHERLOCK, an individual, at all material times herein was residing and working in the County of San Diego, California.

12. Plaintiffs MINORS T.S. and S.S., progeny of Amy and Michael "Biker" Sherlock, are individuals, were, and at all material times herein, living and attending school in the County of San Diego, California.

13. Plaintiff ANDREW FLORES, an individual, at all material times herein was residing and working in the County of San Diego, California.

14. Defendant GINA M. AUSTIN, an individual, at all material times herein was residing and working in the County of San Diego, State of California.

15. Defendant AUSTIN LEGAL GROUP, A Professional Corporation, was at all material

[3] The "Ramona CUP" was issued at 1210 Olive Street, Ramona, CA 92065 (the "Ramona Property").
[4] The "Balboa CUP" was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123 (the "Balboa Property").
[5] The "Federal CUP" was issued at 6220 Federal Blvd., San Diego, CA 92114 (the "Federal Property").
[6] The "Lemon Grove CUP" was issued at 6859 Federal Blvd., Lemon Grove, CA 91945 (the "Lemon Grove Property").

times mentioned herein a Corporation under the laws of the State of California operating and conducting business in the County of San Diego, State of California.

16. Defendant LARRY GERACI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

17. Defendant REBECCA BERRY an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

18. Defendant FINCH, THORTON, and BAIRD, a limited liability partnership, at all material times herein operated and conducted business in the County of San Diego, State of California.

19. Defendant ABHAY SCHWEITZER, an individual and dba TECHNE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

20. Defendant JIM BARTELL an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

21. Defendant NATALIE TRANG-MY NGUYEN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

22. Defendant AARON MAGAGNA an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

23. Defendant JESSICA MCELFRESH an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

24. Defendant SALAM RAZUKI an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

25. Defendant NINUS MALAN an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

26. Defendant BRADFORD HARCOURT an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

27. Defendant LOGAN STELLMACHER an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

28. Defendant EULENTHIAS DUANE ALEXANDER, an individual, was at all material

times mentioned herein residing and working in the County of San Diego, State of California.

29. Defendant STEPHEN LAKE, an individual, was at all material times mentioned herein residing and working in the County of San Diego, State of California.

30. Defendant ALLIED SPECTRUM, INC., a corporation, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California.

31. Defendant PRODIGIOUS COLLECTIVES, LLC, a limited liability company, under the laws of the State of California, was at all material times mentioned herein had its principal place of business and conducted business in the County of San Diego, State of California

32. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants Does 1 through 50, inclusive, are unknown to Plaintiffs who therefore sue said defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges that each of said fictitious Doe defendants is in some manner responsible for the acts and occurrences hereinafter set forth. Plaintiff will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious defendant is responsible for the damages sustained by Plaintiffs.

33. At all relevant times, each defendant was and is the agent of each of the remaining defendants and, in doing the acts alleged herein, was acting within the course and scope of such agency. Each defendant ratified and/or authorized the wrongful acts of each of the defendants.

34. Defendants, and each of them, are individually sued as participants and as aiders and abettors in the unlawful acts, plans, schemes, and transactions alleged in this Complaint. Defendants, and each of them, have participated as members of the conspiracy alleged herein, acted in furtherance of it, aided and assisted in carrying out its purposes, performed acts and made statements in furtherance of the conspiracy, and/or ratified the acts taken in furtherance of the conspiracy.

GENERAL ALLEGATIONS

I. MATERIAL STATE AND CITY LAWS REGARDING CANNABIS APPLICATION REQUIREMENTS.

35. At all material times related to this action, California's cannabis licensing statutes have required any party engaging in commercial cannabis activities to possess both a state license and a local

government permit, CUP or license.

36. At all material times related to this action, California Bus. & Prof. Code ("BPC") § 19323 *et seq*. or BPC § 26057 *et seq*. has mandated the denial of an application for a cannabis state license by an applicant who, *inter alia*, has been sanctioned for unlicensed commercial cannabis activities in the preceding three years; failed to provide required information in an application (including disclosure of all individuals with a direct ownership interest in the license being applied for); or failed to comply with local government requirements for the issuance of a permit, CUP or license for cannabis activities.

37. At all material times related to this action, in the City of San Diego, California, an application for a CUP has required the disclosure of all parties with an interest in the proposed property or CUP in the application.

II. THE PRINCIPALS AND AGENTS OF THE ENTERPRISE.

38. The known principals of the Enterprise are Geraci, Razuki, and Malan.

39. Lake and Harcourt, as further explained below, have numerous connections and relationships with principals and agents of the Enterprise. At this point, it is unclear if they are principals of the Enterprise or individual actors that have worked in concert with and/or ratified the Enterprise's acts in furtherance of their own goal of seeking to profit through unlawful actions in the cannabis industry.

40. Individuals that have acquired interests in CUPs and are members of the Enterprise, worked in concert with the Enterprise or ratified the Enterprise's unlawful actions include Harcourt, Razuki, Malan, Magagna, Alexander, and Schweitzer.

41. Individuals who are non-attorney agents of the Enterprise that have taken acts in furtherance of the Antitrust Conspiracy or who have ratified the acts of the Enterprise include Berry, Bartell, Alexander, Stellmacher, Miller and Schweitzer.

42. The law firms and attorneys that work for the Enterprise and that have taken acts in furtherance of the Antitrust Conspiracy include the Austin Legal Group; Ferris & Britton; Jessica McElfresh; Finch, Thornton & Baird; Matthew Shapiro; and Natalie Nguyen.

III. MATERIAL BACKGROUND

A. Geraci and Razuki have been sanctioned for unlicensed commercial cannabis activities.

43. Geraci has been sanctioned at least twice for unlicensed commercial cannabis activities.[7]

44. Geraci was last sanctioned on June 17, 2015 in the CCSquared Judgment.

45. As in effect on June 17, 2015, pursuant to BPC § 19323(a),(b)(7), Geraci could not lawfully own a cannabis license or CUP until at least June 18, 2018.

46. Razuki was sanctioned for unlicensed commercial cannabis activities on April 15, 2015.[8]

47. As in effect on Aril 15, 2015, pursuant to BPC § 19323(a),(b)(7), Razuki could not lawfully own a cannabis license or CUP until at least April 16, 2018.

B. Austin, Bartell and Schweitzer are experienced professionals in the cannabis industry who aid parties to prepare, apply and acquire CUPs.

48. Austin is an attorney who is "an expert in cannabis licensing and entitlement at the state and local levels and regularly speak[s] on the topic across the nation." [9]

49. Austin has testified that she has worked on approximately twenty-five (25) cannabis CUP applications with the City, of which approximately twenty-three (23) were approved or successfully maintained.

50. Bartell, through his political lobbying firm, B&A, has testified that he has lobbied the City for approximately twenty (20) cannabis CUP applications of which nineteen (19) were approved.

51. Schweitzer has testified that he has worked on approximately thirty to forty (30-40) cannabis CUP applications with the City.

52. Collectively, Austin, Bartell and Schweitzer have worked on the majority of the CUPs issued by the City.

53. Austin, Bartell and/or Schweitzer aided Geraci, Razuki and Magagna apply, acquire and/or maintain ownership interests in CUPs without disclosing all parties with an ownership interest in

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[7] In (i) *City of San Diego v. The Tree Club Cooperative, et al.*, San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgment") and (ii) *City of San Diego v. CCSquared Wellness Cooperative, et. al.*, Case No. 37-2015-00004430-CU-MC-CTL (the "CCSquared Judgment" and, collectively with the Tree Club Judgement, the "Geraci Judgments").

[8] *City of San Diego v. Stonecrest Plaza, LLC*, Case No. 37-2014-00009664-CU-MC-CTL (the "Stonecrest Judgment").

[9] *Razuki v. Malan,* San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL, ROA 127 (Declaration of Gina Austin) at ¶ 2.

the CUPs in violation of numerous State and City laws, including BPC §§ 19323, 26057, SDMC § 11.0401(b) and Penal Code § 115.

C. Jessica McElfresh is a cannabis attorney who has been arrested for conspiring with her clients to commit crimes and obstructing justice.

54. In May 2017, McElfresh was charged with, *inter alia*, Conspiracy to Commit a Crime, Manufacturing of a Controlled Substance, and Obstruction of Justice for her efforts to conceal her client's alleged illegal manufacturing operations from government inspectors. (*People v. McElfresh*, San Diego Superior Court, No. CD272111.)

55. In July 2018, McElfresh entered into a Deferred Prosecution Agreement (the "DPA") that would allow her to plead guilty in twelve months as follows: "On April 28, 2015 [McElfresh] knowingly facilitated the use of a premises without a required permit, in violation of San Diego Municipal Code § 121.0302(a), to wit: an unpermitted marijuana manufacturing and distribution operation by Med West Distribution, LLC."

56. Pursuant to the DPA, for a period of 12 months, McElfresh was prohibited from violating any other laws (except for minor infractions) until July 23, 2019, or face resumption of all charges filed against her.

57. On October 18, 2019, McElfresh was interviewed and quoted in a San Diego Union-Tribune article that stated: "McElfresh said she advised her clients to comply with city orders to shut down, partly because operating without local permission could affect their ability to obtain state marijuana licenses in the future."[10]

58. McElfresh has represented Geraci, Razuki and Malan in various legal matters.

D. Razuki's employee states Razuki openly discussed the plan to create a monopoly and use violence in furtherance of the Antitrust Conspiracy.

59. As further described below, when Flores became the equitable owner of the Federal Property, he began investigating Geraci and his agents and discovered the relationships between Geraci, Magagna, Razuki, Malan and Dave Gash via Austin who has represented all parties.

60. As further described below, Razuki was arrested by the FBI for attempting to have Malan

[10] *See* David Garrick, Roughly Two Dozen San Diego Marijuana Cultivators Forced to Shut Down, SAN DIEGO UNION-TRIBUNE (October 18, 2019).

kidnapped to Mexico and murdered as a result of ongoing litigation between them disputing ownership of approximately $40,000,000 in cannabis assets.

61. During the course of Flores' investigation, he spoke with an investigative reporter who had interviewed an employee of Razuki after Razuki had been arrested by the FBI (the "Employee"). The investigative reporter provided Flores a copy of the interview with the Employee.

62. The Employee stated that he was present when Austin provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a monopoly.

63. The Employee also stated that Razuki and his associates use Mexican gangs to commit violent acts on their behalf to further their goals when disputes arise in the operations of their dispensaries.

IV. THE SHERLOCK PROPERTY

64. Michael "Biker" Sherlock was a husband, father, professional athlete, and an entrepreneur with interests in the cannabis sector.

65. Lake is Mr. Sherlock's brother-in-law.

66. Mr. Sherlock partnered with Lake and Harcourt no later than in or around April 2013 for real estate and cannabis related investments (the "Sherlock Partnership").

67. On or about January 8, 2015, Lake purchased the Ramona Property.

68. On or about January 16, 2015, Mr. Sherlock was granted the Ramona CUP.

69. On or about April 24, 2015, as part of the Sherlock Partnership, Mr. Sherlock and Harcourt formed Leading Edge Real Estate, LLC ("LERE") to be their holding company for real properties. Mr. Sherlock was the CEO of LERE. Mr. Sherlock and Harcourt were both managing members.

70. On or about June 18, 2015, LERE acquired the Balboa Property.

71. On or about July 29, 2015, the City granted Mr. Sherlock's application for the Balboa CUP to his holding entity, United Patients Consumer Cooperative ("United Patients") (hereinafter, collectively, Mr. Sherlock's interests in the Partnership Agreement, LERE, and the Balboa and Ramona

CUPs, the "Sherlock Property").

72. The homeowner's association of the Balboa Property initiated litigation to prevent the opening of the dispensary at the Balboa Property alleging the homeowners association rules prohibited marijuana operations (the "HOA Litigation"). The HOA Litigation was still ongoing in December 2017.

73. On December 3, 2015, Mr. Sherlock passed away, purportedly he committed suicide.

A. Lake and Harcourt defraud Mrs. Sherlock of her interest in the Sherlock Property.

74. In or around December 2015, after Mr. Sherlock passed away, Harcourt submitted documentation to the City to have the Balboa CUP transferred from Mr. Sherlock and his holding entity, United Holdings, to his holding entity, San Diego Patients Cooperative Corporation, Inc. ("SDPCC"), and himself.

75. The day after Mr. Sherlock's death, Lake spoke with investigative officers and stated that he had spent time with Mr. Sherlock the day prior to his passing and that they had discussed problems that Lake felt were "small issues."

76. Shortly after Mr. Sherlock's death, Lake told Mrs. Sherlock that Mr. Sherlock had never actually acquired interests in the Balboa CUP because of the HOA Litigation. Lake told Mrs. Sherlock that Lake, Harcourt and Mr. Sherlock had to "walk away" because it was too expensive to continue financing the HOA Litigation and the parties had decided to walk away from their investments.

77. At various points in time after Biker's death, Lake told Mrs. Sherlock that the facility operating under the Ramona CUP was not making any profits and that there were no distributions for the owners.

78. On or about December 21, 2015, three weeks after Mr. Sherlock's death, LERE was dissolved via a submission to the Secretary of State purportedly executed by Mr. Sherlock (the "Dissolution Form").

79. Subsequent to Mr. Sherlock passing away, public records reveal that Harcourt, Lake, Alexander and Renny Bowden acquired interests in the Ramona CUP.

80. Bowden is Lake's longtime friend and business partner.

81. In or around April 2016, Harcourt on behalf of LERE, executed a grant deed for the Balboa Property in favor of High Sierra Equity, LLC ("High Sierra"), which is owned by Lake.

82. In or around September 2016, Lake on behalf of High Sierra executed a grant deed in favor of Razuki Investments, LLC ("Razuki Investments"), which is wholly owned by Razuki.

83. In or around March 2017, Razuki on behalf Razuki Investments executed a grant deed in favor of San Diego United Holdings Group, LLC ("SD United"), which is wholly owned by Malan.

84. In January 2020, Mrs. Sherlock was introduced to attorney Flores who told her that he was working on case which may have ties to the Balboa CUP. He informed her that a form dissolving an entity LERE was supposedly executed by Biker and processed by the State three weeks after his death (the "Dissolution Form").

85. Mrs. Sherlock reviewed the Dissolution Form, but she did not recognize Biker's signature.

86. Mrs. Sherlock discussed the issue with her sister, Lake's wife, and told her that she intended to sue Harcourt and her sister told her that she should speak with Lake about it. Lake then contacted Mrs. Sherlock and asked to meet.

87. In early February 2020, Mrs. Sherlock met with Lake at a coffee shop, and she told him that she intended to sue Harcourt. At this time, Mrs. Sherlock only knew that the CUP had been transferred into Harcourt's name. Lake initially told Mrs. Sherlock nothing other than "we did it," in which he was referring to the transfer of the Balboa CUP permit. He implied that Mrs. Sherlock's family would shun her for taking legal action against a family member and that she did not have the financial resources to be successful. Lake said something to the effect of, "oh well sorry, nothing you can do about it."

88. On or around February 15, 2020, Flores received an expert handwriting report concluding that Mr. Sherlock's signature was likely forged on the Dissolution Form.

89. Flores provided Mrs. Sherlock the forensic handwriting expert report. Flores also informed Mrs. Sherlock that the Ramona CUP had been transferred at some point to Harcourt and Bowden after review of Sherriff certificates and other publicly available documents. Up until this time, Mrs. Sherlock thought she still had an ownership interest in the Ramona CUP but that it was not operating profitably.

90. On or around February 21, 2020, Flores, on behalf of Mrs. Sherlock, contacted Harcourt's

attorney, Allan Claybon of Messner Reeves, LLP, to inquire how it was that Harcourt obtained ownership interests in the Balboa and Ramona CUPs and Mrs. Sherlock's belief that Mr. Sherlock's signature was forged.

91. On that initial call, Claybon expressly stated to Flores that he appreciated Flores contacting him, that he understood the timing of the submission of the Dissolution Form was suspicious, and that he would contact Harcourt to provide an explanation.

92. Shortly thereafter, in early March 2020, Lake appeared at Mrs. Sherlock's house unannounced.

93. Between the early February of 2020 meeting with Lake and him appearing at Mrs. Sherlock's home, Mrs. Sherlock had learned a lot more about the situation including dissolution of LERE. that the signature did not appear to me to be Biker's, and the handwriting expert had concluded that it was more than likely forged.

94. When Mrs. Sherlock confronted Lake about it, he then said that he had seen Mr. Sherlock execute the Dissolution Form the day before he passed away and that he was in an extremely emotional state, severely depressed because he had to "sign away" the Balboa CUP, because of the allegedly expensive HOA Litigation, and that is why his signature on the Dissolution Form does not look like his normal signature. Lake said that this was the reason why Biker had committed suicide. Lake said that Biker had cost him a lot money and repeatedly attempted to convince Mrs. Sherlock to not sue Harcourt.

95. Mrs. Sherlock was shocked and outraged but kept calm and asked if she would be getting any proceeds related to the Balboa and Ramona CUPs as a result of Biker's investment of time and capital to acquire them. Lake responded that Biker's contributions were "worthless," that Mrs. Sherlock and her children were not entitled to anything, and that she should be content with the proceeds from Mr. Sherlock's life insurance policy.

96. Mrs. Sherlock was angry and responded that, among other things, it was impossible for Mr. Sherlock to have signed away millions of dollars of assets depriving her and his children of their value. As they argued Mrs. Sherlock kept insisting that she would take legal action and Lake became clearly emotionally intense and he admitted that he and Harcourt were responsible for the transfer of the Balboa CUP. Lake said he was the property owner of the Balboa Property and that he had conveyed the

CUP to Harcourt. Lake said he did it to "save" Mrs. Sherlock from the "headaches" of having to deal with the CUP. Mrs. Sherlock told him that she never gave permission for anyone to act on her behalf and that it was her right, duty and honor to settle Mrs. Sherlock's affairs and that she was angry that she was deprived of her rights. Lake then alleged that the Balboa CUP was "stolen" from Harcourt.

97. The conversation became an intense argument and Lake again implied that Mrs. Sherlock could not financially afford to take any legal action and that there was nothing she could do about what had taken place. Lake concluded the conversation by implying that if Mrs. Sherlock took any legal action it would result in her and her children being shunned by their family.

98. During this time, despite Claybon's initial representation that he would speak with Harcourt, over the course of weeks, Flores and Claybon exchanged numerous phone calls and emails in which Claybon repeatedly refused to explain how Harcourt acquired Mr. Sherlock's interest in the Balboa CUP.

99. However, Claybon did communicate that Harcourt allegedly saw Mr. Sherlock execute the Dissolution Form the day before he passed away and also Harcourt's affirmative defenses in anticipation of litigation: (i) the statute of limitations bars any fraud-based causes of action that Mrs. Sherlock may have and (ii) the statute of limitations was not tolled because Mrs. Sherlock did not "exercise reasonable diligence" because she did not check the State's records after Mr. Sherlock passed away. Attached hereto as Exhibit 2 is the email chain between Flores and Claybon and fully incorporated herein by this reference.

B. *Razuki I*: Razuki/Malan defraud Harcourt of his interest in the Balboa CUP.

100. On or around June 6, 2017, SDPCC and Harcourt filed a lawsuit against, *inter alia*, Razuki and Malan alleging they had successfully conspired to defraud them of the Balboa CUP ("*Razuki I*").[11] (References to Razuki and Malan include the entities through which they operate.)

101. The *Razuki I* complaint contains causes of action against Razuki and Malan for, *inter alia*, breach of an alleged oral joint venture agreement reached in or around August 2016.

102. Materially summarized, the *Razuki I* complaint alleges that: (i) Razuki/Malan and

[11] *San Diego Patients Cooperative Corporation, Inc. v. Razuki Investments, LLC*, San Diego Superior Court Case No. 37-2017-00020661-CU-CO-CTL.

Harcourt reached an oral joint venture agreement for the operating of the dispensary that operates with the Balboa CUP; (ii) the Balboa CUP was valued at least 6 million dollars; (iii) Razuki/Malan provided a $50,000 "good faith" payment while the parties were negotiating the joint venture agreement; (iv) Razuki/Malan then purchased the real property at which the Balboa CUP was issued; (v) Razuki/Malan then fraudulently represented themselves as the owner of the Balboa CUP to the City; (vi) the City transferred the Balboa CUP to entities owned by Razuki/Malan; and (vii) thereafter Razuki/Malan fraudulently represented that $800,000 was the value of the real property at which the Balboa CUP was issued, inclusive of the Balboa CUP.

C. *Razuki II*: Malan defrauds Razuki of his undisclosed interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP.

104. On or about July 10, 2018, Razuki initiated a lawsuit against, among others, Malan alleging he has ownership interests in approximately $40,000,000 in cannabis assets, including the Balboa CUP held in Malan's name, from which Malan was unlawfully diverting money owed to him ("*Razuki II*").[12]

105. In *Razuki II*, both Razuki and Malan have admitted that they reached an oral agreement pursuant to which Razuki and Malan would be partners in cannabis related businesses. Their agreement provided for Razuki to provide the initial cash investment to purchase certain assets while Malan would manage the assets. The parties agreed that after reimbursing the initial investment to Razuki, Razuki would be entitled to seventy-five percent (75%) of the profits & losses of the assets and Malan would be entitled to twenty-five percent (25%) of said profits & losses.

106. Razuki provided a sworn declaration stating his agreement with Malan provided for Malan to hold title to the cannabis assets without disclosing Razuki's ownership interest because he had been sanctioned in the Stonecrest Judgment for unlicensed commercial cannabis activities.[13]

107. But-for the legal disputes between Razuki and Malan over ownership of the $40,000,000

[12] *Razuki v. Malan*, San Diego County Superior Court, Case No. 37-2018-0034229-CU-BC-CTL.

[13] *Razuki II*, ROA 79 (Razuki Declaration) at 6:1-8 ("Because of [the Stonecrest Judgment], I was concerned with having my name on any title associated with a marijuana operation. This is why Malan would put his name on title for the LLCs related to our marijuana operations. I always assumed he would honor the oral agreement and [a] [s]ettlement [a]greement that would entitle me to 75% ownership of all the [p]artnership [a]ssets.").

in cannabis assets, it would not be public knowledge that Razuki and Malan had an agreement for Razuki to hold title to said assets and not disclose Razuki's ownership interest therein because of the Stonecrest Judgment, in violation of applicable State and City laws.

D. *Razuki III* and *Razuki IV*: Razuki attempts to have Malan kidnapped to Mexico and murdered to acquire the $44,000,000 in cannabis assets, is arrested by the FBI, and Malan sues Razuki for trying to have him murdered.

108. On or around November 15-16, 2018, the FBI arrested Razuki, Sylvia Gonzalez and Elizabeth Juarez for conspiring to kidnap and murder Malan because of *Razuki II* ("*Razuki III*").[14]

109. Razuki did not know that one of the individuals that he attempted to hire to murder Malan was an informant for the FBI.

110. On or about August 7, 2019, Malan filed suit against, among others, Razuki, Gonzales, and Juarez for, *inter alia*, (i) interference with the exercise of his civil rights to engage in civil litigation (i.e., *Razuki III*) and (ii) intentional infliction of emotional distress related to their conspiracy to have him kidnapped and murdered ("*Razuki IV*").[15]

E. Summary of *Razuki I-IV* and the transfers of ownership of the Balboa Property and the Balboa CUP.

111. Lake and Harcourt unlawfully converted Mr. Sherlock's interest in the Sherlock Property via at least one forged document. Harcourt has refused to explain how he lawfully acquired Mr. Sherlock's interests in the Balboa or Ramona CUPs. Harcourt was in turn allegedly defrauded of the Balboa CUP by Razuki and Malan and filed suit (i.e., *Razuki I*). Malan was then allegedly defrauding Razuki by not providing him his share of profits of his undisclosed interests in various cannabis assets, including the Balboa CUP, and Razuki filed suit (i.e., *Razuki II*). Razuki then tried to have Malan murdered by hiring a hitman who was an informant for the FBI and was arrested by the FBI (i.e., *Razuki III*). Malan then sued Razuki for causes of action arising from Razuki's attempt to have him murdered to prevent him from continuing with their litigation over the $40,000,000 in cannabis assets (i.e., *Razuki IV*).

112. In Razuki *II*, the Court appointed a receiver to manage the assets, which came to include

[14] *United States v. Salam Razuki*, No. 18MJ5915 (S.D. Cal. Nov. 19, 2018).
[15] *Malan v. Razuki, et. al.*, San Diego Superior Court, Case No. 37-2019-00041260-CU-PO-CTL.

the Court ordered sale of the Balboa Property and the Balboa CUP (the "Balboa Assets").

113. On April 5, 2021, Mrs. Sherlock filed a motion to intervene in *Razuki II* seeking to prevent the sale of the Balboa CUP, which was denied.

114. On May 26, 2021, the Court ordered the Balboa Assets sold to Prodigious Collective ("Prodigious").

115. Based on the grant deed recorded at the Balboa Property, the Sherlock Family believes the Balboa Property was transferred to Allied pursuant to the sale to Prodigious.

V. THE FEDERAL CUP

A. Cotton and Geraci enter into an agreement to apply for a CUP at the Federal Property.

116. Cotton is the owner-of-record of the Federal Property at which he operates 151 Farms.

117. Geraci has approximately 40 years of experience providing tax services and has been the owner-manager of Tax & Financial Center "T&F Center" since 2001. T&F Center provides sophisticated tax, financial and accounting services.

118. In mid-2016, Geraci identified the Federal Property and began negotiating with Cotton for the purchase of the Federal Property because he believed it would qualify for a CUP.

119. Austin, Bartell, and Schweitzer were hired by Geraci and responsible for preparing, submitting, and lobbying a CUP application with the City at the Federal Property that was submitted in the name of Geraci's assistant, Berry (the "Berry CUP Application").

120. On October 31, 2016, Geraci presented Cotton with an Ownership Disclosure Form, a required component of the City's CUP application.

121. Geraci told Cotton that he needed Cotton to execute the form to show to his agents that he had access to the Federal Property as part of his due diligence in determining whether the property qualified for a CUP.

122. On October 31, 2016, Geraci had the Berry CUP Application filed with the City, which included the Ownership Disclosure Form and a Form DS-3032 General Application (the "General Application" and attached hereto as Exhibit 3.

123. The Ownership Disclosure Statement required a list that "***must*** include the names and

addresses of all persons who have an interest in the property, ***recorded or otherwise***, and state the type of interest."

124. The Berry CUP Application falsely states that Berry is the owner of the CUP being applied for; Geraci is not disclosed anywhere in the Berry CUP Application.

125. The Berry CUP Application was filed without Cotton's knowledge or consent.

126. On November 2, 2016, Cotton and Geraci met at Geraci's office and entered into an oral joint venture agreement whereby Cotton would sell the Federal Property to Geraci (the "JVA").

127. The material terms of the JVA were that Cotton would receive (i) $800,000, (ii) a 10% equity stake in the CUP, (iii) the greater of $10,000 a month or 10% of the net profits of the contemplated dispensary; and (iv) a $50,000 non-refundable deposit in the event the CUP application at the Federal Property was not approved. Geraci also promised that his attorney, Austin, would promptly reduce the JVA to writing.

128. The JVA was subject to a single condition precedent, the approval of a CUP application with the City at the Federal Property by Geraci.

129. At their meeting at which the JVA was reached, Geraci had Cotton execute a three-sentence document to memorialize Cotton's receipt of $10,000 towards the total $50,000 non-refundable deposit (the "November Document") and attached hereto as Exhibit 4.

130. On November 2, 2016, after the parties reached the JVA and executed the November Document, the following email communications took place:

(i) At 3:11, Geraci emailed Cotton a copy of the November Document.

(ii) At 6:55 PM, Cotton replied as follows:

> Hi Larry, [¶] Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property, I'll be fine if you would simply acknowledge that here in a reply.

(the "Request for Confirmation.") Attached hereto as Exhibit 5.

(iii) At 9:13 PM, Geraci replied: "No no problem at all" (the "Confirmation Email"). Attached hereto as Exhibit 6 are these three email exchanges between Cotton and Geraci.

131. On November 3, 2016, Geraci and Cotton spoke over the phone.

132. Subsequently, for months, Cotton and Geraci communicated via email and texts regarding the JVA and issues regarding the approval of a CUP at the Federal Property.

B. Cotton negotiates with Williams to sell the Federal Property.

133. In or around January 2017, after Geraci had failed to reduce the JVA to writing, Cotton began to seek new partners to apply for the Federal CUP at the Federal Property in the event Geraci failed to reduce the JVA to writing.

134. Cotton informed Williams about Geraci's failure to reduce the JVA to writing.

135. In or around February 2017, Williams and Cotton reached the material terms of an agreement for the sale of the Federal Property, subject to the JVA being terminated with Geraci.

136. The material terms of the agreement were for William's 50% purchase of the Federal Property and a 50% ownership interest in the Federal CUP if approved at the Federal Property for $2,500,000.

137. On or around March 6, 2017, Williams spoke to Austin, his attorney, about his intent to enter into an agreement with Cotton.

138. Austin told Williams that he could not enter into an agreement with Cotton because Geraci already had a final, written agreement for the purchase of the Federal Property.

139. Williams, relying on Austin's representation, believed that Cotton had executed a final written agreement with Geraci and was acting in bad-faith attempting to breach his agreement with Geraci to get better terms than those he had negotiated with Geraci and did not enter into an agreement with Cotton.

C. Cotton terminates the JVA with Geraci for his failure to reduce the JVA to writing.

140. On March 7, 2017, Geraci emailed Cotton a revised draft of a purchase agreement for the purchase of the Federal Property and in the cover email he states: "… the 10k a month might be difficult to hit until the sixth month… can we do 5k, and on the seventh month start 10k?".

141. Geraci's request to lower the monthly payment of $10,000 to $5,000 reflects the parties had an existing agreement that included a term of monthly $10,000 payments to Cotton from which

Geraci was requesting an amendment, in accordance with the JVA.

142. On or around March 7, 2017, Cotton discovered the Berry CUP Application was submitted on October 31, 2016, prior to his agreement with Geraci on November 2, 2016, and that the Berry CUP Application failed to disclose Geraci or Cotton and their respective ownership interests per the JVA.

143. Thereafter, Cotton continued to demand that Geraci reduce their JVA to writing as Geraci had promised, which Geraci never did.

144. Cotton did not know that Geraci had previously been sanctioned for unlicensed commercial cannabis activities and could therefore not lawfully own a CUP in his name.

145. On March 21, 2017, after several requests for assurance that the JVA would be honored were ignored by Geraci, Cotton emailed Geraci, terminating the JVA for anticipatory breach and informed him that he would be entering into an agreement with a third party for the sale of the Federal Property.

146. Thereafter, that same day, Cotton entered into a written joint venture agreement with Martin for the sale of the Federal Property.

D. Geraci files *Cotton I* to interfere with the sale of the Federal Property and the acquisition of the Federal CUP by a non-Enterprise party.

147. On March 22, 2017, Geraci's attorneys from the law firm of Ferris & Britton served Cotton with *Cotton I* alleging the November Document was executed with the intent of being a final written contract for Geraci's purchase of the Federal Property. Ferris & Britton also served Cotton with a copy of a recorded lis pendens on the Federal Property (the "F&B Lis Pendens").

148. As a matter of law, *Cotton I* was filed without factual or legal probable cause because the November Document cannot be a lawful contract for at least two reasons: it lacks mutual assent and a lawful object.

E. McElfresh and FTB represent Cotton against Geraci in *Cotton I*, neither of whom disclose they have shared clients with Geraci and Austin, and take actions to sabotage Cotton's case.

149. On or around May 12, 2017, Cotton filed *pro se* a cross-complaint in *Cotton I* against Geraci and Berry with causes of action for: (i) quiet title, (ii) slander of title, (iii) fraud/fraudulent

misrepresentation, (iv) fraud in the inducement, (v) breach of contract, (vi) breach of oral contract, (vii) breach of implied contract, (viii) breach of the implied covenant of good faith and fair dealing, (iv) trespass, (x) conspiracy, and (xi) declaratory and injunctive relief (the "*Cotton I XC*").

150. The basis of the *Cotton I XC* is that Cotton and Geraci reached the JVA and Geraci was seeking to prevent the sale to Martin by misrepresenting the November Document, a receipt, as a contract for the purchase of the Federal Property.

151. Cotton's cause of action for breach of oral contract materially stated as follows (emphasis added):

> ***The agreement reached on November 2nd, 2016 is a valid and binding oral agreement between Cotton and Geraci***.
>
> Geraci has breached the agreement by, among other actions described herein, alleging the written November [Document] is the final and entire agreement for the Property.

152. Cotton's cause of action against Geraci and Berry for conspiracy materially alleged as follows (emphasis added):

> Berry submitted the [Berry Application] in her name on behalf of Geraci because Geraci has been a named defendant in numerous lawsuits brought by the City of San Diego against him for the operation and management of unlicensed, unlawful and illegal marijuana dispensaries. **These lawsuits would ruin Geraci's ability to obtain a CUP himself**.

153. Subsequent to filing the *Cotton I XC*, Cotton acquired a litigation investor, Hurtado.

154. In or around April 2017, Hurtado consulted with attorney McElfresh to represent Cotton and she agreed to represent Cotton.

155. As Hurtado was acting as an agent of Cotton, an attorney-client relationship was established.[16]

156. On or around April 13, 2017, McElfresh emailed Hurtado that "upon further reflection"

[16] *See Miller v. Metzinger* (1979) 91 Cal.App.3d 31, 39-40 ("As our Supreme Court said in *Perkins v. West Coast Lumber Co.* (1900) 129 Cal. 427, 429 [62 P. 57]: 'When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established prima facie.' [….] In *Westinghouse Elec. Corp. v. Kerr-McGee Corp.* (7th Cir. 1978) 580 F.2d 1311, 1319, the court said: 'The fiduciary relationship existing between lawyer and client extends to preliminary consultation by a prospective client with a view to retention of the lawyer, although actual employment does not result.'").

that she did "not have the bandwidth" to represent Cotton and referred Hurtado to Demian of FTB.

157. Demian, a partner, and Adam Witt, an associate, of FTB were engaged and represented Cotton in *Cotton I*.

158. In engaging FTB, FTB was provided the communications between Geraci and Cotton.

159. FTB represented they knew that Martin, Hurtado and others had interests in the Federal Property and the Federal CUP and were third-party beneficiaries of FTB's services provided to Cotton.

160. On or around June 30, 2017, Demian and Witt substituted in as counsel for Cotton and filed an amended cross-complaint in *Cotton I* (the "*Cotton I FAXC*").

161. The *Cotton I FAXC* removed Cotton's allegations that it is unlawful for Geraci to own a CUP because he had been sanctioned for unlicensed commercial cannabis operations.

162. The *Cotton I FAXC* reduced and revised Cotton's causes of action from 11 to 7 as follows: (i) breach of contract; (ii) intentional misrepresentation; (iii) negligent misrepresentation; (iv) false promise; (v) intentional interference with prospective economic relations; (vi) negligent interference with prospective economic relations; and (vii) declaratory relief.

163. FTB's amendments from Cotton's *Cotton I CX* to their *Cotton I FAXC* were without factual or legal justification given the facts known to them.

164. The unjustified amendments include:

(i) Removing Cotton's cause of action for breach of an oral contract;

(ii) Removing Cotton's cause of action for fraud;

(iii) Removing Cotton's cause of action for conspiracy against Geraci and Berry; and

(iv) Removing Berry from all causes of action except the seventh for declaratory relief.

165. Demian represented to Cotton the amendments were just and proper and in Cotton's best interest.

166. Cotton relied on Demian's representations as Demian was his attorney who he believed was acting in his best interest.

167. Subsequent to FTB filing the *Cotton I XC*, FTB was informed that Martin is a high net worth individual who was prepared to hire independent counsel if he was named as a party in *Cotton I*.

168. On or about August 25, 2017, FTB filed a second amended cross-complaint for Cotton

(the "*Cotton I SAXC*"). This time, FTB removed the causes of action for intentional and negligent interference with prospective economic relations for the sale to Martin.

169. Martin was an indispensable party to the action as the purchaser of the Federal Property and was required to be named in *Cotton I*.

170. On or about November 3, 2017, Judge Wohlfeil held a hearing on Geraci's demurrer to Cotton's *Cotton I SAXC* at which Demian argued that Cotton had not reached a final agreement with Geraci, but rather that Geraci and Cotton had reached "an agreement to agree."

171. Demian's argument on behalf of Cotton contradicts Cotton's factual allegations in his *Cotton I XC* that the "agreement reached on November 2, 2016, is a valid and binding oral agreement," and fails to state a cause of action against Geraci because "an agreement to agree" in the future is not a lawful, enforceable agreement.[17]

172. In or around November 2017, at a meeting at FTB's office, Witt, while waiting for Demian, told Cotton that he had just overheard Demian talking with another partner at FTB and that FTB had shared clients with Geraci or Geraci's T&F Center.

173. Demian had never disclosed that Geraci or his company had shared clients with FTB.

174. In December 2017, during the course of his representation, Demian attempted to have Cotton execute a supporting declaration to argue in an *ex parte* application before the *Cotton I* court that Geraci was acting as Cotton's agent when Geraci had Berry submit the Berry Application to the City in her name without disclosing Geraci or Cotton's ownership interest.

175. Specifically, Demian wanted Cotton to admit that: "Cotton and Plaintiff/Cross-defendant Geraci reached an agreement regarding the sale of the Property in or around November 2016 ('November Agreement') which included, among other things, an agreement for **Geraci to pursue the [Federal] CUP *on* Cotton's behalf.**"

176. FTB has no factual or legal justification to have Cotton make this argument.

177. FTB's argument was contradicted by the pleadings submitted by Cotton and every

[17] "It is Hornbook law that an agreement to make an agreement is nugatory, and that this is true of material terms of any contract." *Roberts v. Adams* (1958) 164 Cal. App. 2d 312, 314. "[N]either law nor equity provides a remedy for a breach of an agreement to agree in the future." *Id*. at 316 (quotation omitted).

communication provided by Cotton to them.

178. Had Cotton executed the declaration and admitted that he, Cotton, and not Geraci, was the true applicant of the Berry CUP Application, Cotton's allegations of illegality against Geraci would fail to state a claim and Cotton would be the party strictly liable for violating State and City disclosure laws for using a proxy that failed to name him as the true and beneficial owner of the CUP applied for.[18]

179. On or around December 7, 2017, at a hearing before Judge Wohlfeil regarding the validity of the November Document being a contract, Demian failed to raise the Confirmation Email as evidence that the parties did not mutually assent to the November Document being a contract, or even raise the concept of mutual assent or illegality.

180. That same day, Cotton fired Demian or Demian quit because of Demian's failure to raise the issue of mutual assent before Judge Wohlfeil.

181. Later that day, when confronted by Cotton, Demian admitted he had failed to raise the issue of mutual assent or the Confirmation Email as evidence that Cotton and Geraci had not mutually assented to the November Document being a contract and stated it was because he had a "bad day."

182. At that point in time, Cotton did not know that McElfresh, who referred Hurtado to Demian, had shared clients with Austin and that she also worked for Razuki. Nor did Cotton understand the gravity of an attorney who fails to disclose conflicts of interests between clients.

F. Geraci and F&B collude to create and present fabricated evidence – the Disavowment Allegation - to the *Cotton I* court to overcome filing a lawsuit without probable cause because F&B relied on outdated case law.

183. From the filing of the *Cotton I* complaint in March 2017 until April 2018, Geraci's pleadings, motion practice and judicial and evidentiary admissions argued that the statute of frauds and the parol evidence rule barred admission of the Request for Confirmation, the Confirmation Email and other parol evidence as evidence that the parties did not mutually assent to the November Document being a purchase contract for the Federal Property.

184. For example, in Geraci's reply to his demurrer of the *Cotton I SACX*:

> Cotton alleges, based on extrinsic evidence, that the actual agreement between the parties contains material terms and conditions in addition to those in the [November Document]

[18] SDMC § 121.0311 (violations of the SDMC are strict liability offenses).

> as well as a term (a $50,000 deposit rather than the $10,000 deposit stated in the [November Document] that expressly conflicts with a term of the [November Document]. However, such a claim cannot stand as extrinsic evidence cannot be employed to prove an agreement at odds with the terms of the written memorandum.

185. On April 4, 2018, Cotton, via a specially appearing attorney, filed a motion to expunge the F&B Lis Pendens (the "Lis Pendens Motion"). The Lis Pendens Motion argued for the first time in *Cotton I* that, pursuant to *Riverisland*,[19] Geraci could not use the parol evidence rule as a shield to bar parol evidence as proof that the parties executed the November Document as a receipt and that Geraci was fraudulently representing it as a contract.

186. The Lis Pendens Motion was a *de facto* motion for summary judgment as a finding that the November Document is not a contract as a matter of law for lacking mutual assent would have meant that the *Cotton I* complaint, premised on the allegation that the November Document is a contract, was filed without probable cause.

187. On April 9, 2018, Geraci executed a declaration in support of his opposition to the Lis Pendens Motion. Attached hereto as Exhibit 7 and fully incorporated herein by this reference.

188. In his declaration, Geraci alleged for the first time that (i) Geraci did not read the entire Request for Confirmation before sending the Confirmation Email; (ii) Geraci called Cotton on November 3, 2016 and told him that he did not intend to send the Confirmation Email; (iii) Cotton orally agreed that the Request for Confirmation was sent as an attempt to acquire a 10% equity position in the CUP that the parties had not bargained-for and Cotton stated "well, you don't get what you don't ask for"; and (iv) Cotton orally agreed he was not entitled to a 10% equity interest in the CUP that is established by his Request for Confirmation and Geraci's Confirmation Email (the "Disavowment Allegation").

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[19] On January 14, 2013, the California Supreme Court overruled a longstanding precedent regarding the fraud exception to the parol evidence rule. In the 1935 case, *Bank of America Etc. Assn. v. Pendergrass* ("*Pendergrass*") 4 Cal.2d 258, the California Supreme Court declared inadmissible evidence of promissory fraud—a promise made without the intent to perform—made prior to and inconsistent with the subsequent written agreement. The court's unanimous decision in *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* ("*Riverisland*") (2013) 55 Cal.4th 1169, overruled *Pendergrass* and declared that the parol evidence rule does not bar evidence of promissory fraud that contradicts the terms of a writing. *Id.* at 1182 ("***[I]t was never intended that the parol evidence rule should be used as a shield to prevent the proof of fraud***.") (quotation omitted, emphasis added); *see IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 641 ***("[U]nder Pendergrass, external evidence of promises inconsistent with the express terms of a written contract were not admissible, even to establish fraud***.") (emphasis added).

189. The sole evidence that Geraci provided of the Disavowment Allegation were his phone records reflecting that Geraci and Cotton spoke on November 3, 2016.

190. The *Cotton I* court denied the Lis Pendens Motion finding the November Document appeared to be a contract without addressing the parol evidence and the issue of mutual assent.

191. Subsequent to the hearing, Cotton emailed Weinstein accusing him of fabricating the Disavowment Allegation, to which Weinstein responded as follows:

> First, our view is that the statute of frauds bars the [Confirmation Email] because it is parol evidence that is being offered to explicitly contradict the terms of the [November Document]. Mr. Geraci does not contend that his call to Mr. Cotton on November 3, 2016, resulted in an oral agreement between them that Mr. Cotton was not entitled to a 10% equity position. Rather, Mr. Geraci's position is that there was never an oral agreement between them that Mr. Cotton would receive a 10% equity position. Even assuming for the sake of argument that the [Confirmation Email] is not barred by the parol evidence rule and admissible, the telephone call the next day is parol evidence that Mr. Geraci never agreed to a 10% equity position and, therefore, it is consistent with the [November Document] and not barred by the statute of frauds.

192. First, the statute of frauds does not apply to the JVA.[20]

193. Second, pursuant to *Riverisland*, parol evidence is not barred to prove fraud.

194. Third, under California law as explained in *Stewart v. Preston Pipeline Inc.*, even assuming that Geraci's allegation of mistakenly sending the Confirmation Email were true, Geraci may not avoid the legal impact of sending the Confirmation Email on the ground that he failed to read the Request for Confirmation before signing it.[21]

195. Thus, even setting aside the illegality of Geraci's sanctions, there is no factual or legal

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[20] *Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 374 ("[A]n oral joint venture agreement concerning real property is not subject to the statute of frauds even though the real property was owned by one of the joint venturers.").

[21] "It is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of its terms on the ground that he failed to read the instrument before signing it. [¶] Plaintiff has cited no California cases (and we are aware of none) that stand for the extreme proposition that a party who fails to read a contract but nonetheless objectively manifests his assent by signing it—absent fraud or knowledge by the other contracting party of the alleged mistake—may later rescind the agreement on the basis that he did not agree to its terms. To the contrary, California authorities demonstrate that a contracting party is not entitled to relief from his or her alleged unilateral mistake under such circumstances." *Stewart v. Preston Pipeline Inc.*, 134 Cal. App. 4th 1565, 1588-89 (citations and quotations omitted).

probable cause for the filing of *Cotton I*.

G. Austin attempts to avoid service of process to allege she is not aware of the Geraci Judgments.

196. On August 8, 2018, Cotton appealed from the order denying the Lis Pendens Motion seeking to expunge the F&B Lis Pendens, which referenced the Geraci Judgments and the illegality of Geraci's ownership of a CUP.

197. On August 27, 2018, Cotton's then counsel and paralegal served Austin personally and as counsel for Magagna. Attached hereto as Exhibit 8 are the proofs of service describing Austin's actions attempting to avoid service and fully incorporated by this reference.

198. During discovery, Geraci asserted the attorney-client privilege as to communications between him and Austin.

H. The *Cotton I* trial and the Motion for New Trial.

199. In the years leading up to the trial of *Cotton I*, Cotton took numerous actions to seek to prevent Geraci from being able to process the Berry CUP Application at the Federal Property.

200. Cotton's actions included preventing Geraci from accessing the Federal Property for actions required to process the Berry CUP Application.

201. Cotton took such actions because in order for Geraci to limit his liability for filing *Cotton I*, Geraci needed to make it impossible for Cotton or any other party to acquire a CUP at the Federal Property. Thus, Geraci's consequential damages once his illegal actions are exposed, would not include the value of a CUP issued at the Federal property and such would limit his liability by millions of dollars and also serve to prevent third parties from seeking to help Cotton finance his litigation against Geraci.

202. Austin, Berry, Bartell, and Schweizer testified on Geraci's behalf at the trial of *Cotton I*.

203. At the trial of *Cotton I*, Judge Wohlfeil found that the CUP application would have been approved at the Federal Property but-for what he believed to be Cotton's unlawful interference with the processing of the application with the City: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened…"

204. At the *Cotton I* trial, Austin testified: (i) she was not aware of the Geraci Judgments; (ii) she does not know why, or cannot remember why, Geraci used Berry as an agent for the Berry CUP

Application; and (iii) when presented with the Ownership Disclosure Statement, Austin was asked: "after reading that, why [did] it seem unnecessary to list Mr. Geraci?" Austin responded: "I don't know that it - - it was unnecessary or necessary. We just didn't do it."

205. At the trial of *Cotton I*, Berry's testimony alleged that while Geraci was not disclosed because he was an Enrolled Agent for the IRS, she was not aware that the City's CUP application forms required Geraci to be disclosed because she did not read them. Specifically, Berry testified: "I simply signed this. It was filled out by our team and I signed it. Trusting Mr. Geraci and the team."

206. During trial, Cotton moved for a directed verdict arguing BPC § 20657 *et seq.* bars Geraci's ownership of a CUP, which was summarily denied.

207. The *Cotton I* judgment found, *inter alia*, that Geraci "is not barred by law pursuant to California Business and Professions Code, Division 10 (Cannabis), Chapter 5 (Licensing), § 26057 (Denial of Application) from owning a Marijuana Outlet conditional use permit issued by the City of San Diego."

208. The $260,109.28 in damages awarded Geraci included legal fees for McElfresh's representation of Geraci in advancing the interests of the Berry CUP Application before the City.

209. After trial, Cotton filed a motion for new trial again arguing, *inter alia*, the illegality of the Proxy Practice, which Judge Wohlfeil denied finding the defense of illegality had been waived.

VI. THE MAGAGNA CUP APPLICATION WAS FILED TO PREVENT THE APPROVAL OF THE BERRY CUP APPLICATION AND LIMIT GERACI AND HIS COCONSPIRATORS LIABILITY ONCE THEIR UNLAWFUL ACTIONS WERE EXPOSED.

210. On or about March 14, 2018, Magagna submitted an application for a CUP at 6220 Federal Blvd. that is located within 1,000 feet of the Federal Property (the "Magagna CUP Application").

211. Prior to then, Williams had engaged Schweitzer on several CUP applications and was actively working with him on CUP applications at other real properties.

212. In or around November 2018, Schweitzer told Williams that the Magagna CUP Application would be approved and that he would have an ownership interest in the Federal CUP.

213. On or about October 18, 2018, the Magagna CUP Application was approved by the City.

214. Schweitzer is not listed as a party with an ownership interest in the Magagna CUP Application.

VII. DURING THE COURSE OF THE *COTTON I* LITIGATION, GERACI AND HIS AGENTS UNDERTOOK ACTS AND THREATS OF VIOLENCE AGAINST COTTON AND THIRD PARTIES SEEKING TO COERCE COTTON TO CEASE THE *COTTON I* LITIGATION.

A. Eulenthius Duane Alexander and Logan Stellmacher threaten Cotton on behalf of Geraci.

215. On or about February 3, 2018, Alexander and Stellmacher and a third-party went to the Federal Property purportedly to discuss business opportunities with Cotton.

216. However, when they arrived at the Federal Property, they only wanted to discuss the *Cotton I* litigation.

217. They made an offer to purchase the Federal Property stating they had reached an agreement with Geraci to take over the Berry CUP Application, offering to beat Martin's purchase price of $2,500,000, and promising Cotton a long-term job at the contemplated dispensary if Cotton could settle his litigation with Geraci.

218. Cotton declined, noting he was contractually unable to settle the litigation with Geraci in a manner that left Geraci the Federal Property because of his agreement with Martin.

219. Thereafter, Alexander and Stellmacher engaged in direct and indirect threats seeking to coerce Cotton to settle with Geraci.

220. Alexander made it a point to highlight that Geraci was a politically influential individual with the City and that the Berry CUP Application being approved was already a "done deal" for Geraci.

221. Stellmacher then directly threatened Cotton, stating that (i) Geraci's influence with the City extended to having the ability to have the San Diego Police Department raid the Federal Property and have Cotton arrested on fabricated charges and planted drugs and (ii) Geraci could have dangerous individuals visit the Federal Property implying they would cause bodily harm to Cotton.

222. Cotton refused the offer.

223. Thereafter, on numerous occasions, Stellmacher harassed Cotton.

224. On or about February 8, 2019, Stellmacher became aware that Cotton intended to file a federal lawsuit and describe Stellmacher's threats, and he went to the Federal Property and pleaded with Cotton to not name him as he had been arrested in Texas and was out on bail for illegally transporting cannabis.

B. Magagna attempts to bribe and threatens Young to prevent her from providing testimony against Geraci and his agents.

225. On or around October 2, 2017, Young visited the Federal Property and took a tour of 151 Farms. Young went to the Federal Property because she had heard about the property qualifying for a CUP and was looking for an investment opportunity.

226. Young was informed about the *Cotton I* litigation and was given a proposal to invest in the litigation as a means of acquiring an ownership interest in the Federal CUP.

227. Young had or did engage Bartell who worked on another CUP application at a different property.

228. Young spoke to her cannabis attorney, Shapiro, about the potential investment who told her that she should speak to Bartell.

229. Bartell told her not to invest in the *Cotton I* litigation because he "owned" the Berry CUP Application and he was getting it denied with the City because "everyone hates Darryl" (the "Bartell Statement").

230. Young did not invest in the *Cotton I* litigation.

231. Young was not aware that at the same time the Bartell Statement was made, Geraci was arguing before Judge Wohlfeil in *Cotton I* that Geraci was using his best efforts to have the Berry CUP Application approved, including through the political lobbying efforts of Bartell.

232. On or around May 27, 2018, Young met with Cotton and others to discuss a secured loan instead of litigation financing.

233. At the meeting, Young was informed by Cotton that he believed that Magagna was a co-conspirator of Geraci who was seeking to help Geraci mitigate his damages by having the Magagna CUP Application approved.

234. Young recognized Magagna and told Cotton that Shapiro was also Magagna's attorney and about the Bartell Statement.

235. However, Young stated her belief that Magagna was not a bad-faith actor and called him to speak about what was happening.

236. Young met with Magagna and explained Cotton's belief that he was a coconspirator of Geraci. To her surprise, Magagna did not deny the allegations, instead, he asked her to change her

statements and offered her a bribe for doing so. Young refused.

237. Despite her refusal, Magagna repeatedly requested that Young communicate with Cotton and tell him that she had "dreamed" the Bartell Statement.

238. Young continued to refuse and Magagna became increasingly physically and vocally aggressive with his demands until they parted, demanding Young not say anything about their conversation and to "keep him out of it."

C. Nguyen, Young's attorney, promises and fails to provide Young's testimony.

239. Nguyen and Austin both attended law school together at Thomas Jefferson School of Law in San Diego, California, and were both admitted to the California Bar in December 2006.

240. On January 1, 2019, Cotton subpoenaed Young to be deposed on January 18, 2019.

241. On January 16, 2019, Nguyen, representing Young, unilaterally cancelled the deposition of Young.

242. On January 21, 2019, Nguyen promised to provide Young's sworn testimony confirming, *inter alia*, the Bartell Statement and Magagna's attempts at bribing and threatening her.

243. On June 12, 2019, after having been put off for months by Nguyen, counsel for Cotton emailed Nguyen demanding she provide Young's promised testimony, to which Nguyen never responded.

244. On June 30, 2019, the day before the start of trial in *Cotton I*, Flores spoke with Young who said she had moved out of the City, could not be served, would not testify, and did not want anything to do with Cotton or *Cotton I*.

245. In January 2020, Flores spoke with Young and informed her that by failing to provide her promised testimony that he believed she was a coconspirator of Geraci and he intended to file suit against her.

246. Young broke down and said she had done nothing illegal and that it was Nguyen who had unilaterally decided not to provide her testimony after Young had already agreed to provide it.

247. Young stated that (i) Nguyen was referred to her by Shapiro, (ii) Shapiro paid Young's legal fees to Nguyen, (iii) Nguyen – in an email – told her that it was OK to "ignore" their obligation to provide Young's testimony because "it was too late for Cotton to do anything about it."

248. Thereafter, Young, having learned that Cotton intended to sue her for her failure to provide her promised testimony, emailed Cotton the email from Nguyen stating it was "too late" for Cotton to do anything about subpoenaing her for trial at *Cotton I*. Attached hereto at Exhibit 9 is a true and correct copy of that email.

D. Gash offers Young a job in Palm Springs, CA that prevents Cotton from subpoenaing Young for trial.

249. The job that Young received that was the catalyst for her moving out of the City, and being unable to be located to be served again for trial, was as a manager at a dispensary called Southern California Organic Treatment (SCOT) in Palm Springs, CA.

250. Public records reveal that Austin has or is counsel for SCOT.

251. Dave Gash and James Yamashita are, respectively, the CEO and CFO of SCOT.

252. Public records reveal that Gash (i) was sanctioned for unlicensed cannabis activities along with Ramistella and Yamashita; and (ii) was the property manager at the Balboa Property at which the Balboa CUP was issued.

253. Ramistella was a co-defendant and sanctioned with Geraci in the TreeClub Judgement for unlicensed commercial cannabis activities.

254. Based on the relationships between the parties, Plaintiffs believe and allege that the job offer to Young by Gash was made and intended to prevent Cotton from being able to locate and subpoena Young to testify at the trial of *Cotton I.*

E. Shawn Miller threatens Hurtado to coerce him to have Cotton settle the *Cotton I* litigation.

255. "Following a jury trial, defendant Shawn Joseph Miller was found guilty on two counts of committing wire fraud, in violation of 18 U.S.C.§ 1343, two counts of money laundering, in violation of 18 U.S.C.§ 1957, and one count of witness tampering, in violation of 18 U.S.C.§ 1512(b)(3)." *U.S. v. Miller*, 531 F.3d 340, 342 (6th Cir. 2008).

256. At a pretrial hearing, Miller's own attorney, fearing for his safety, requested that he be

relieved as counsel for Miller due to his violent nature.[22]

257. Subsequent to being released, Miller began working as a contract paralegal in the City.

258. In or around January 2018, Hurtado attempted to hire Miller as a contract paralegal for Cotton and his then counsel.

259. When Hurtado met Miller, he explained the *Cotton I* litigation and that Geraci was a "mafia like figure." Further that he was not a party to and did not want to be involved in the litigation because of the evidence of violence by Geraci and that he was concerned for the safety of his family, and he needed to do what was in their "best interest."

260. Thereafter, Miller stated that he knew Geraci.

261. Hurtado told him it would be a conflict of interest to hire Miller and requested Miller not inform Geraci about him. Miller agreed.

262. That same night, at approximately 10:00 p.m., Miller called Hurtado requesting that Hurtado use his influence with Cotton to persuade him to settle with Geraci because Geraci is really "not a bad guy" and that it would be in Hurtado's "best interest," which was a direct reference to their earlier conversation and Hurtado's concerns for the safety of his family.

263. The parties argued during which Hurtado accused Miller of threatening him on behalf of Geraci and hung up on Miller.

264. Thereafter, Miller repeatedly called, texted and harassed Hurtado under the guise of seeking to collect payment for work that he alleges he performed at Hurtado's request.

265. In *Cotton I,* Geraci responded to a special interrogatory as follows:

> **SPECIAL INTERROGATORY NO. 35:**
> Have YOU or YOUR AGENTS requested that Shawn Miller contact Joe Hurtado regarding any matter related to this litigation?
>
> **RESPONSE TO SPECIAL INTERROGATORY NO. 35**
> Not that I am aware. Moreover, I have never requested or authorized any person to do so.

266. Geraci's response allows for the possibility that if phone records and other evidence prove

[22] *Miller*, 531 F.3d 343 (Miller's attorney: "The Defendant and I just had a meeting, which deteriorated to a very violent nature…. I was hoping while he sat in jail he would come to his senses but obviously has not. He is hostile to me. I cannot under the ethical situation even sit at the same trial table with him. So I have all the evidence here that he needs. I can give it to him and let him represent himself.").

that Miller threatened and harassed Hurtado under the pretext of seeking to collect a debt, that Miller did so on behalf of Geraci but without Geraci's knowledge or consent.

VIII. AUSTIN INTERFERES WITH WILLIAMS ACQUISITION OF THE LEMON GROVE CUP AND WILLIAMS WITHDRAWS FROM THIS LAWSUIT AFTER BEING UNLAWFULLY CONTACTED BY AUSTIN.

267. Williams first retained Austin to be his attorney for cannabis related matters in or around February 2017.

268. In or around March 2017, Williams discussed with Austin his intent to purchase the Lemon Grove Property.

269. Austin represented to Williams that the Lemon Grove Property did not qualify for a CUP and that he should not purchase the Lemon Grove Property.

270. Subsequently, the Lemon Grove CUP was issued at the Lemon Grove Property.

271. The parties who acquired the Lemon Grove CUP at the Lemon Grove Property were represented by McElfresh.

272. Austin's representation to Williams that the Lemon Grove Property did not qualify for a CUP was false.

273. The original complaint in this action was filed on December 3, 2021.

274. On or around December 8, 2021, Austin contacted Williams despite knowing he was represented by counsel in violation of the Rules of Professional Responsibility.

275. Subsequently, Williams decided to withdraw from this suit.

IX. THE RELATED FEDERAL ACTIONS

276. There are two related actions in federal court by plaintiffs, one by Flores, Mrs. Sherlock, T.S., S.S. and, the second, by Cotton. Those actions are based on the Enterprise's unlawful actions violating plaintiffs Civil Rights related to the *Cotton I* action. Those actions sought to have, *inter alia*, the *Cotton I* judgment declared void due to, *inter alia*, the actions by Geraci and his agents that constitute a fraud on the Court. *See Kougasian v. TMSL, Inc.* (9th Cir. 2004) 359 F.3d 1136, 1141 ("It has long been the law that a plaintiff in federal court can seek to set aside a state court judgment obtained through extrinsic fraud.").

277. The actions do not seek to have the federal courts adjudicate the rights of plaintiffs to

personal or real property at issue in the state actions, the relief requested is limited to the violations of plaintiffs Civil Rights and seeking to have the *Cotton I* judgment declared void.

278. Motions to dismiss against Plaintiffs federal suit are pending. However, on October 22, 2021, the Federal Court issued its latest ruling in the Cotton matter finding that the *Rooker-Feldman* doctrine bars its review of the *Cotton I* judgment for illegality. (*See Cotton v. Bashant, et al.*, 18-CV-325 TWR (DEB), ECF No. 96 at 7:18-20 ("[Cotton's] claim is barred by the *Rooker-Feldman* doctrine.").

279. The necessity of having the *Cotton I* judgment declared void because of ALG's Proxy Practice must be addressed in State court.

ADDITIONAL FACTUAL ALLEGATIONS AND CAUSES OF ACTION

FIRST CAUSE OF ACTION – CONSPIRACY TO MONOPOLIZE IN VIOLATION OF THE CARTWRIGHT ACT (BUS. & PROF. CODE § 16700 *et seq.*)

(Plaintiffs v. Defendants)

280. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

281. "The purpose of the Cartwright Act is to protect and foster competition by preventing combinations and conspiracies which unreasonably restrain trade." *Morrison v. Viacom, Inc.*, 52 Cal. App. 4th 1514, 1524 (1997). The Cartwright Act prohibits trusts, which it defines as "combination[s] of capital, skill, or acts by two or more persons" for certain enumerated purposes, including "[t]o create or carry out restrictions in trade or commerce." BPC § 16720(a). A conspiracy to monopolize is within the Cartwright Act's definition of a trust as "a combination of capital, skill, or acts by two or more persons" to restrain trade. BPC § 16720. The California Supreme Court has emphasized that "agreements to establish or maintain a monopoly are restraints of trade made unlawful by the Cartwright Act." *In re Cipro Cases I & II*, 61 Cal. 4th 116, 148 (2015).

282. Defendants designed, implemented and/or ratified a combination and conspiracy with the specific intent to prevent competition and/or create a monopoly in the cannabis market in the City and County of San Diego in violation of the Cartwright Act.

283. Defendants committed overt acts and engaged in concerted action in furtherance of their

combination and conspiracy to restrain trade and monopolize, as described above, including but not limited to unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, sham litigation,[23] and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy.

284. As a direct and legal result of the unlawful actions of defendants, and each of them, Plaintiffs were injured in their business and/or property, all of which injuries have caused and continue to cause Plaintiffs' damage. Pursuant to BPC §16750(a), Plaintiffs are entitled to recover three (3) times the damages sustained by them, according to proof.

SECOND CAUSE OF ACTION– CONVERSION

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Prodigious and Allied)

285. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

286. The Sherlock Family had ownership interests in the Sherlock Property upon the death of Mr. Sherlock as his heirs.

287. After the death of Mr. Sherlock, Lake and Harcourt converted the Sherlock Property through documents that contained Mr. Sherlock's forged signature, including the Dissolution Form.

288. Conversion is a strict liability crime and holders of converted property, including bona fide purchasers, are liable for conversion and must return the property.

289. Prodigious and Allied, in which Malan holds an ownership interest, hold, respectively, the Balboa CUP and the Balboa Property, for which they are strictly liable.

290. The Sherlock Family is entitled to have their property returned to them.

THIRD CAUSE OF ACTION – CIVIL CONSPIRACY

(Mrs. Sherlock, T.S., and S.S. v. Lake and Harcourt)

291. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

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[23] The *Noerr-Pennington* doctrine and sham exception apply to the Cartwright Act. *See Blank v. Kirwan* (1985) 39 Cal. 3d 311, 320–322 (defendants' actions aimed at influencing city were protected from Cartwright Act claim by *Noerr-Pennington* doctrine); *Hi-Top Steel Corp. v. Lehrer*, 24 Cal. App. 4th 570, 579 (1994) ("we hold the sham exception to the *Noerr-Pennington* doctrine is applicable in California.").

292. Lake and Harcourt conspired to convert the Sherlock Family's interest in the Sherlock Property after the death of Mr. Sherlock through forged documents, including the Dissolution Form, as well as to conceal from them their causes of action to seek judicial redress for same.[24]

293. Shortly after Mr. Sherlock passed away, Lake knowingly and falsely represented to Mrs. Sherlock that Mr. Sherlock never acquired interests in the Balboa CUP.

294. Mrs. Sherlock trusted and relied on Lake's representations as he is her brother-in-law and was Mr. Sherlock's business partner.

295. Lake also falsely stated that he was the purchaser of the Balboa Property.

296. Mr. Sherlock's interest in the Balboa Property via his interest in LERE was converted by Harcourt when he transferred Balboa Property from LERE to Lake.

297. In or around March 2020, when Mrs. Sherlock confronted Lake with a handwriting expert report concluding that Mr. Sherlock's signature was forged on the Dissolution Form, Lake admitted to Mrs. Sherlock that he had converted the Mr. Sherlock's interest in the Balboa and Ramona CUPs after Mr. Sherlock's death.

298. As detailed above, Lake's reasoning for depriving the Sherlock Family of their interests in the CUPs included that Mr. Sherlock's contributions were "worthless," the Sherlock Family was not entitled to any compensation, and there was nothing Mrs. Sherlock could do about it because she lacked the financial resources to vindicate her rights.

299. Lake's statements to Mrs. Sherlock in or around February 2020, alleging Mr. Sherlock was in an extremely emotional state and executed the Dissolution Form, contradict his statements to investigative officers after the death of Mr. Sherlock in December 2015, were fabricated, and intended to cover-up his unlawful role in the sale of the Sherlock Property.

300. Harcourt's repeated refusal to explain how he purchased Mr. Sherlock's interests in the CUPs, but his communication of affirmative defenses in anticipation of litigation, evidence his knowing unlawful role in purchasing Mr. Sherlock's interests in the Balboa and Ramona CUPs.

301. In doing the things herein alleged, Lake and Harcourt acted purposefully with malice and oppression to deprive the Sherlock Family their rights to the Sherlock Property and prevent them from

[24] *See Ramey v. General Petroleum Corp.* (1959) 173 Cal. App. 2d 386, 403 (conspiracy to conceal and defeat plaintiff's common law action for damages).

seeking judicial redress for same. Lake and Harcourt's actions thereby warrant an assessment of punitive damages in an amount appropriate to punish them and deter others from engaging in similar misconduct pursuant to Civ. Code § 3294(c).

FOURTH CAUSE OF ACTION – DECLARATORY RELIEF

(Mrs. Sherlock, T.S., and S.S. v. Lake, Harcourt, Razuki, Malan, Prodigious and Allied)

302. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

303. The Sherlock Family dispute the claims of past and current ownership by Lake, Harcourt, Razuki, Malan, Prodigious and Allied to the Balboa Property and the Balboa CUP.

304. The Sherlock Family were unlawfully deprived of their interests in LERE (and thereby the Balboa Property) and the Balboa CUP.

305. The Balboa Property and the Balboa CUP were sold pursuant to a Court order based on the assumption that Lake/Harcourt had original lawful ownership of the assets and that they were lawfully acquired by Razuki/Malan.

306. As set forth above, Lake and Harcourt did not lawfully acquire Mr. Sherlock's ownership interests in LERE and the Balboa CUP. Further, Razuki and Malan's acquisition of the Balboa Property and the Balboa CUP pursuant to their illegal agreements also do not provide a lawful basis for their claims to the Balboa Property and the Balboa CUP.

307. Consequently, the Court ordered sale of the Balboa Property and the Balboa CUP is void as it is premised on the lawful ownership of the assets by Lake/Harcourt and Razuki/Malan.

308. The Sherlock Family desires a declaration that the transfers of Mr. Sherlock's interests in LERE and the Balboa CUP are void.

309. The Sherlock Family desires a declaration that the Oral and Partnership Agreements are illegal contracts are void and judicially unenforceable and, consequently, the Court ordered sale of the assets is void for unknowingly enforcing illegal contracts and converted property.

FIFTH CAUSE OF ACTION – UNFAIR COMPETITION LAW

(Cal. Bus. & Prof. Code § 17200 *ET SEQ.*)

(Plaintiffs v. Defendants)

310. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

311. The above-described acts and practices of Defendants and Does 1-100 in furtherance of the constitute unfair competition in that they are unlawful,[25] unfair,[26] and/or fraudulent business practices in violation of California's Unfair Competition Law ("UCL") codified at BPC § 17200 et seq.

312. As detailed above, the wrongful conduct of Defendants and Does 1 through 50, and each of them, as herein above alleged, seeking to prevent competition and ratification of acts seeking to prevent competition, in the cannabis market in the City and County of San Diego violate the Cartwright Act.

313. The filing of all documents with public offices effectuating the transfer of the Sherlock Property after the death of Mr. Sherlock are based on forged documents and violate Penal Code § 115.

314. ALG's Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et. seq.

315. The preparation, filing, and lobbying of CUP applications with the City by Malan, Berry, and Magagna, failing to disclose the ownership interests of, respectively, Razuki, Geraci, and Schweizer, violate BPC § 19323 et seq. and/or § 26057 et seq. and Penal Code § 115.

316. The filing and maintaining of the sham Cotton I action by Geraci, and F&B constitutes predatory and anticompetitive conduct that is unlawful and fraudulent.

317. Geraci and F&B's collusion to fabricate, present and testify as to the Disavowment Allegation, in response to Riverisland being raised in the Lis Pendens Motion, constitutes perjury (Pen. Code § 118) and subordination of perjury (Pen. Code § 127).

318. McElfresh's representation of Geraci in furtherance of the Berry CUP Application before

[25] "The 'unlawful' practices prohibited by … section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. … As [the] Supreme Court put it, section 17200 'borrows' violations of other laws and treats them as unlawful practices independently actionable under section 17200 *et seq*." *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 880–881 (cleaned up).

[26] The definition of "unfair" includes "[k]nowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Golden State Seafood, Inc. v. Schloss*, 53 Cal. App. 5th 21, 40 (2020).

the City violated her fiduciary duties to Cotton as her former client,[27] the terms of her DPA as she knew Geraci could not lawfully own a CUP via the Berry CUP Application pursuant to BPC § 19323 et seq., and Penal Code § 115.

319. Nguyen's failure to provide Young's testimony violates her professional responsibilities as an officer of the court as well as Cal. Pen. Code § 136 (preventing a witness from testifying).

320. The threats of violence by Alexander and Stellmacher against Cotton as agents of Geraci seeking to prevent him from continuing with litigation against Geraci constitute obstruction of justice pursuant to Pen. Code § 182(a)(5).

321. The threats of violence and harassment by Miller against Hurtado as an agent of Geraci seeking to have him cease his support of Cotton's litigation against Geraci constitutes obstruction of justice pursuant to Pen. Code § 182(a)(5).

322. The attempted bribery and threats by Magagna against Young violate Cal. Pen. Code § 136.1(d) and § 182(a)(5).

323. Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits, such other monetary relief as the court deems just in light of the ill-gotten gains obtained by Defendants as a result of such business acts or practices, and an injunction prohibiting Defendants from engaging in the practices described herein.

SIXTH CAUSE OF ACTION – DECLARATORY RELIEF

(Flores v. Geraci)

324. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

325. Flores seeks to have the *Cotton I* judgment declared void for, *inter alia*, enforcing an illegal contract and being the product of a fraud on the court.

326. The Courts have "define[d] a judgment that is void for excess of jurisdiction to include a

[27] "Few precepts are more firmly entrenched than that the fiduciary relationship between attorney and client is of the very highest character and, even though terminated, forbids (1) any act which will injure the former client in matters involving such former representation or (2) use against the former client of any information acquired during such relationship." *Yorn v. Superior Court*, 90 Cal. App. 3d 669, 675 (1979) (citations omitted).

judgment that grants relief which the law declares shall not be granted."[28]

327. Geraci was sanctioned by the City in the CCSquared Judgment on June 17, 2015.

328. As in effect in October and November 2016 when the Berry CUP Application was submitted and the November Document executed, BPC § 19323(a),(b)(7) provided that a "licensing authority shall deny an application if the applicant has been sanctioned by a city for unlicensed commercial cannabis activities in the three years immediately preceding the date the application is filed with the licensing authority." BPC § 19323(a),(b)(7) (cleaned up; emphasis added).

329. The *Cotton I* judgment is therefore void because it grants relief to Geraci that the law declares shall not be granted.

330. Flores' causes of action asserted herein relating to their interests in the Federal Property and the Federal CUP are based on their contention that the November Document is not a lawful contract because it lacks mutual assent and a lawful object.

331. An actual controversy has arisen and now exists between Flores and Geraci in that Geraci contends the *Cotton I* judgment is not a void judgment.

332. A declaration finding the *Cotton I* judgment is void is necessary and appropriate at this time so that the rights, duties and obligations of these parties may be ascertained without reliance upon a void judgment that has no legal effect and cannot give rise to any rights in this action.

SEVENTH CAUSE OF ACTION – CIVIL CONSPIRACY

(Plaintiffs v. Defendants)

333. Plaintiffs reallege and incorporate herein by reference the allegations in the preceding paragraphs.

334. Defendants Lake and Harcourt unlawfully transferred the Sherlock Property from Mr. Sherlock thereby depriving the Sherlock Family of their interest in the Sherlock Property.

335. As set forth above, the remaining defendants took or ratified acts in furtherance of the Antitrust Conspiracy.

336. Irrespective of whether Lake and Harcourt are principals or agents of the Enterprise, all defendants are joint tortfeasors whose actions have damaged Plaintiffs.

[28] *311 S. Spring St. Co. v. Dep't of Gen. Servs.*, 178 Cal. App. 4th 1009, 1018 (2009).

337. In doing the things herein alleged, defendants have acted with malice, oppression, and fraud in conscious disregard of Plaintiffs' rights, thereby warranting an assessment of punitive damages in an amount appropriate to punish Defendants and deter others from engaging in similar misconduct.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that the Court grant the following relief:

1. Pursuant to Government Code § 12261, that the Court order the reinstatement of LERE.

2. For compensatory, general, consequential, and incidental damages and prejudgment interest in an amount to be proven at trial, as permitted by law.

3. An award of statutory damages, as permitted by law.

4. An award of punitive and exemplary damages, as permitted by law.

5. Reasonable attorneys' fees and costs, as permitted by law.

6. A declaration that ALG's Proxy Practice is an unlawful business practice.

7. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining ALG from continuing with the Proxy Practice.

8. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining the transfer of the Sherlock Property.

9. For a temporary restraining order, preliminary injunction, and permanent injunction enjoining Magagna from selling and/or transferring interests in the Federal CUP pending resolution of this action.

10. Any other injunctive relief as required to effectuate the relief requested herein.

11. Any such other and further relief as the Court deems fair, equitable, and just.

Dated: December 22, 2021

Law Offices of Andrew Flores

By /s/ Andrew Flores

Plaintiff *In Propria Persona*, and
Attorney for Plaintiffs
AMY SHERLOCK, and Minors T.S. and
S.S.

EXHIBIT 1

LLC-4/7	Certificate of Cancellation of a Limited Liability Company (LLC)

To cancel the Articles of Organization of a California LLC, or the Certificate of Registration of a registered foreign LLC, you can fill out this form, and submit for filing.

- There is no filing fee, however, a non-refundable **$15** service fee must be included, if you **drop off** the completed form.
- To file this form, the status of your LLC must be active on the records of the California Secretary of State. To check the status of the LLC, go to kepler.sos.ca.gov.

Important! California LLCs only: This form must be filed after or together with a Certificate of Dissolution (Form LLC-3). However, if the vote to dissolve was made by all of the members and that fact is noted in Item 4 below, Form LLC-3 is not required.

Note: *Before submitting the completed form*, you should consult with a private attorney for advice about your specific business needs. It is recommended for proof of submittal that if this form is mailed, it be sent by Certified Mail with Return Receipt Requested.

FILED ICM
Secretary of State
State of California
DEC 21 2015 8P0

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This Space For Office Use Only

For questions about this form, go to *www.sos.ca.gov/business-programs/business-entities/filing-tips.*

① **LLC's Exact Name in CA** (on file with CA Secretary of State)
Leading Edge Real Estate, LLC

② **LLC File No.** (issued by CA Secretary of State)
201511910148

Tax Liability (The following statement should not be altered. For information about final tax returns, go to https://www.ftb.ca.gov or call the California Franchise Tax Board at (800) 852-5711 (from within the U.S.) or (916) 845-6500 (from outside the U.S.).)

③ All final returns required under the California Revenue and Taxation Code have been or will be filed with the California Franchise Tax Board.

Dissolution (California LLCs ONLY: Check the box if the vote to dissolve was made by the vote of all the members.)

④ ☉ The dissolution was made by the vote of all of the members.

Additional Information (If any, list any other information the persons filing this form determine to include.)

⑤ _____

_____

Cancellation (The following statement should not be altered.)

⑥ Upon the effective date of this Certificate of Cancellation, this LLC's Articles of Organization (CA LLCs) or Certificate of Registration (registered foreign LLCs) will be cancelled and its powers, rights and privileges will cease in California.

Read and sign below: For California LLCs: This form must be signed by a majority of the managers, unless the LLC has had no members for 90 consecutive days, in which case the form must be signed by the person(s) authorized to wind up the LLC's affairs. For registered foreign LLCs: This form must be signed by a person authorized to so do under the laws of the foreign jurisdiction. If the signing person is a trust or another entity, go to www.sos.ca.gov/business-programs/business-entities/filing-tips for more information. If you need more space, attach extra pages that are 1-sided and on standard letter-sized paper (8 1/2" x 11"). All attachments are part of this document.

Sign here	*Print your name here*	*Your business title*
▶ Michael Sherlock	Michael Sherlock	Manager
▶ Bradford Harcourt	Bradford Harcourt	Manager

Make check/money order payable to: **Secretary of State**

To get a copy of the filed document, include a separate request and payment for copy fees when the document is submitted. Copy fees are $1 for the first page and $.50 for each additional page. For certified copies, there is an additional $5 certification fee, per copy.

By Mail	***Drop-Off***
Secretary of State Business Entities, P.O. Box 944228 Sacramento, CA 94244-2280	Secretary of State 1500 11th Street., 3rd Floor Sacramento, CA 95814

Corporations Code §§ 17702.03, 17707.04, 17707.08, 17708.06
LLC-4/7 (REV 12/2014)

2014 California Secretary of State
www.sos.ca.gov/business-programs

EXHIBIT 2

From: Andrew flores
To: Evan P. Schube
Subject: FW: Sherlock -Harcourt Leading Edge Real Estate
Date: Tuesday, March 23, 2021 2:32:00 PM
Attachments: image001.png
image003.png

Hello Evan,

Please see the email chain between myself and Mr. Claybon, Harcourts attorney. I will be forwarding you some other materials shortly.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego, CA 92101
P. (619) 356-1556
F. (619) 274-8053
andrew@floreslegal. com

From: Allan Claybon <aclaybon@messner.com>
Sent: Monday, March 9, 2020 1:41 PM
To: Andrew flores <andrew@floreslegal.pro>
Cc: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

SETTLEMENT COMMUNICATION PURSUANT TO FRE 408; CAL. EVID. CODE § 1152:

Mr. Flores,

I have had further discussion with my client. Without admitting any to any of the concerns that you have raised, he is hopeful an exchange of information would lead to a greater understanding of the related occurrences and will attempt to provide some further information. Please be specific as to what information you are seeking so that we can try to minimize any further back and forth.

To that end, it would not be productive for either side of this dispute to continue to issue threats or to be dismissive of each other's position. Escalation over email or on the phone will not advance either sides' causes.

With respect to your citation to Stevens, the case does not support any means for Ms. Sherlock to assert a claim against me, my firm or Mr. Harcourt for a violation of the Civil Rights Act ("CRA"). As stated previously, my firm did not represent Mr. Harcourt during the time period in which the alleged acts which allegedly deprived Ms. Sherlock of any property interest occurred. Regardless, the plaintiffs in Stevens were able to assert violations of the CRA as they were recognized as a protected political class. A violation of the CRA requires proof of "class-based, invidiously discriminatory animus." Ms. Sherlock has not faced discrimination based upon membership in a protected class. Therefore, she cannot assert claim for a violation under the CRA or any conspiracy to commit a violation of the CRA.

My client is willing to discuss the information requested after taking time to gather evidence. We can discuss soon when and how this can take place. Please let me know if you have questions.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, March 4, 2020 7:14 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Mrs. Sherlock demanded to know Mr. Harcourt's explanation for how he ended up owning 100% of the Balboa CUP after evidence was discovered that Mrs. Sherlock was unlawfully deprived of her interest in the Balboa CUP as Mr. Sherlock's heir (as fully described below). That demand is not unreasonable. It takes no effort for Mr. Harcourt to respond with a simple statement as to whether he purchased Mr. Sherlock's interest or Mr. Harcourt disavowed his interest in the Balboa CUP for some reason. Your feigned ignorance of the simplicity of this issue is apparent and your refusal to provide an explanation is unreasonable.

I am writing to make two points. First, as I noted, I went to the City and the documents that Mr. Harcourt references in his complaint pursuant to which the City transferred him sole ownership of the Balboa CUP are not in the City's file. Thus, your allegation that you "believe" the documents are "publicly accessible" has no factual basis. I have exercised due diligence and have not come across any such documents, if you know where they are publicly available, please let me know.

Second, as noted, your description of Mrs. Sherlock's demand based on the facts and arguments set forth below as "unreasonable" lacks probable cause. Even if Mr. Harcourt is not responsible for forging Mr. Harcourt's signature or engaged in unlawful conduct, that does not explain why he is refusing to provide a simple explanation given the facts. In my professional opinion, you have crossed the line from zealous advocacy of your client to being a co-conspirator of Mr. Harcourt seeking to defraud Mrs. Sherlock. *See Stevens v. Rifkin*, 608 F. Supp. 710, 730 (N.D. Cal. 1984) ("Though there appears to be no clear rule of immunity with respect to the liability under the civil rights laws of attorneys who violate the civil rights of others while representing their clients, cases under the Civil Rights Act indicate that the attorney may be held liable for damages if, on behalf of the client, the attorney takes actions that he or she knows, or reasonably should have known, would violate the clearly established constitutional or statutory rights of another.") (citing *Buller v. Buechler*,706 F.2d 844, 852-853 (8th Cir. 1983).

Based on the language in *Stevens*, I will be forced to protect Mrs. Sherlock's rights by filing suit against your personally and your firm as co-conspirators of Mr. Harcourt. And we will let a Court determine which one of us is unreasonable in light of our positions described below. Please consider this notice of my intent to file suit and a TRO against, *inter alia*, Mr. Harcourt, you, and your firm for conspiring to defraud Mrs. Sherlock of her interest in the Balboa CUP.

If you have any case law that contradicts *Stevens* and which allows you to unilaterally ignore Mrs. Sherlock's demand, particularly as the core basis of this suit is the belief that Mr. Harcourt fabricated documents and your refusal is potentially allowing him time to fabricate additional evidence to legitimize the transfer, please provide it and I will reconsider my position in light of any such authority.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, March 3, 2020 4:42 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

While I am disappointed in such a statement, I will be brief since you do not want to "engage in more phone calls or emails back and forth." I have been forthright and cordial in our communications hoping to find a resolution between the sides. A resolution should still be possible, but your emails are not pointing us in a productive direction.

On behalf of Mr. Harcourt, we are declining to produce documents based upon your demands. These requests are unreasonable for a number of reasons, not the least of which is a 24-hour deadline to produce evidence *to your satisfaction* regarding events occurring in or around 2015. Furthermore, many of the documents that we believe you are seeking are publicly accessible. There is no compulsion by law for Mr. Harcourt to produce documents to you on demand.

As you do not want to "more phone calls or emails back and forth" we also decline to go point-by-point regarding the significant misstatements of law and facts that appear throughout your latest emails. We are in disagreement with most of what you have said and each allegation contained therein. Without seeing any formalized complaint or other pleading, we are still unsure of your exact claims.

This email is sent based upon your 3/3/20 deadline. I am open to further discussion if you choose to reach out. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Monday, March 2, 2020 4:26 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

I spoke with Mrs. Sherlock today who reviewed Mr. Harcourt's complaint. Also, relatedly, I personally went to DSD and requested to view the file for the Balboa CUP before I even initially contacted you.

Mr. Harcourt's complaint alleges: "After Sherlock passed away in or around December 2015 HARCOURT submitted documentation to the City of San Diego in order to remove, Sherlock as the MMCC's responsible person, and HARCOURT then finalized the recording of the CUP with the City of San Diego und SDPCC." Nowhere in the City file for the Balboa CUP are there any documents that are described or that could be those referenced in Mr. Harcourt's complaint.

Please consider this a demand that you produce (i) the documents referenced in the Complaint and (ii) Mr. Harcourt's plain statement as to whether he is alleging he purchased Mr. Sherlock's interest or he is purporting that Mr. Sherlock disavowed any interest in the CUP for whatever reason (in anticipation of expensive litigation or otherwise).

Please note that Mrs. Sherlock never gave any authority to any party to negotiate on her behalf and any such alleged agency would have needed to be memorialized in writing to satisfy the statute of frauds. Please note that if you fail to produce those documents and/or Mr. Harcourt's explanation by 5:00 p.m. tomorrow, please consider this notice of our intent to file suit and an ex parte TRO seeking the court to order Mr. Harcourt to immediately set forth his purported reasons for how he ended up owning 100% of the Balboa CUP (before he is given more time to potentially fabricate additional evidence).

Lastly, so that there is no ambiguity between us, I have been cordial and civil in seeking to attempt to understand Mr. Harcourt's position. But, I find your description of my view of the facts as "speculation" and your description of me as being "jaded," for not taking Mr. Harcourt at his word, as unreasonable and personally offensive – we will let a judge determine whether the facts and positions taken by Mr. Harcourt below constitute probable cause. If you are correct, then feel free to bring a motion to dismiss and for Rule 11 sanctions for filing what you are de facto accusing me of – filing a frivolous lawsuit. As noted below, these communications are not privileged and will be used as an Exhibit in the complaint against Mr. Harcourt.

I stress the preceding because I do not have the time, or the desire, to engage in more phone calls or emails back and forth with you arguing over whether the facts below are speculation or probable cause. Please provide the requested facts by 5:00 tomorrow.

Andrew Flores
Attorney at Law
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San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Friday, February 28, 2020 4:45 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

I am acknowledging receipt of your email. As it almost exclusively consists of your current allegations regarding this matter, I will just say that I disagree with your points but will await for your follow-up after consulting with Ms. Sherlock. Thank you and have a good weekend.

Allan B. Claybon
Attorney

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10866 Wilshire Boulevard | Suite 800
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424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Thursday, February 27, 2020 7:36 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

Thank you for your note. So that there is no confusion regarding our respective positions in our conversation today, please let me know if the following accurately summarizes our top three points of contention. Please respond if I have misunderstood or not accurately described our positions and I apologize ahead of time if I have. It was not purposeful.

First, setting other arguments aside, you believe that statute of limitations has tolled for a fraud cause of action. I rely on the following case language to argue that it has not: "It has long been established that the defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations, but only for that period during which the claim is

undiscovered by plaintiff or until such time as plaintiff, by the exercise of reasonable diligence, should have discovered it. Like the discovery rule, the rule of fraudulent concealment is an equitable principle designed to effect substantial justice between the parties; its rationale is that the culpable defendant should be estopped from profiting by his own wrong to the extent that it hindered an `otherwise diligent' plaintiff in discovering his cause of action." *Bernson v. Browning-Ferris Industries*, 7 Cal.4th 926, 931 (Cal. 1994) (quotations omitted). Mrs. Sherlock was not made aware of the forged signature until this month.

Which segues into your next, second, position, that the testimony of Mr. Harcourt and Mrs. Sherlock's brother-in-law establishes as a "fact" that Mr. Sherlock's signature was not forged. Thus there is no fraud. However, my position is that their testimony - that they allegedly saw Mr. Sherlock execute the form dissolving the LLC (and other documents) the day before his death - does not conclusively establish as a matter of law that Mr. Sherlock did in fact execute those documents and there is no fraud. As noted, I believe this is a non sequitur because it presupposes that Mr. Harcourt and Mrs. Sherlock's brother-in-law did not engage in fraud when that is the allegation to be determined. I believe it is self-evident that, *if there was fraud*, both Mr. Harcourt and Mrs. Sherlock's brother-in-law are currently benefiting from the fraud, which makes their testimony at the very least suspect and does not establish their alleged testimony as "facts" as you argue. (I realize you believe my position to be, as you described it, "jaded," but I hope you can appreciate that fraudulent self-serving testimony is a staple of my primary criminal defense practice and have seen such ignored by juries on many occasions, even to my clients' detriment.)

Given the evidence in opposition, I believe whether there was fraudulent action is a triable issue of fact. Specifically, because in opposition there is, *inter alia*, (i) the testimony of Mrs. Sherlock that Mr. Sherlock would "never" have signed away his interests in any CUPs without consideration as he had used their family savings to finance the acquisition of same; (ii) Mrs. Sherlock's testimony that she does not believe that it is Mr. Sherlock's signature; (iii) at least as of our conversation today, which took place after you spoke with Mr. Harcourt, there is no allegation or evidence of any documentation regarding any transfer of Mr. Sherlock's interests in the CUPs for any consideration; (iv) the handwriting expert who with a high degree of certitude provided his report that in his professional opinion the signature was forged; and (v) that though Mr. Sherlock allegedly signed various forms the day before he committed suicide, they were submitted to the state at different points in time and show different time stamps.

Third, and last, setting aside other arguments, you raised the position that Mrs. Sherlock failed to exercise reasonable diligence by not checking the state's public records. My position on this is that while Mrs. Sherlock knew that Mr. Sherlock had used their family's savings to pay for the application and processing of the CUPs, she did not know that it had been issued to Mr. Sherlock and Mr. Harcourt or that Mr. Sherlock allegedly agreed to disavow or transfer his interest in the CUP to Mr. Harcourt. Further, being practical, Mrs. Sherlock was a stay-at-home mother of two children who was faced with a horrible situation and was, and is, deeply financially challenged in the aftermath of her husband's passing away. This is not litigation hyperbole. Frankly, I am attempting to see things from your perspective, but I can't think of any line of reasoning or legal principle that would lead to the conclusion that Mrs. Sherlock's failure to review the state's public records means she failed to exercise "reasonable diligence" and therefore she has waived a fraud claim that, if true, has subjected her to severe emotional and financial distress.

Materially, Mrs. Sherlock's brother-in-law noted there was a lawsuit seeking to null the CUP, and Mr. Sherlock had no funds to finance an opposition to that lawsuit, thus he "signed away" the CUP. However, with my understanding of the cannabis CUP market, this by itself is not reasonable. As Mr. Harcourt himself alleges in his complaint against Mr. Razuki, the CUP by itself is worth $1,500,000. Thus, Mr. Sherlock could have sold his interest in the CUP for some amount to recoup some of his investment up to that point.

Lastly, though admittedly circumstantial, Mrs. Sherlock said that her brother-in-law

was literally crying yesterday while he was apologizing for not ever, in the preceding four plus years, informing her that he had allegedly seen Mr. Sherlock execute the form the day before his death. He also emphatically requested that she not pursue any litigation. I personally find this militates against taking Mrs. Sherlock's brother-in-law at his word and provides probable cause to believe that he *may* have engaged in some fraudulent conduct. Obviously, Mrs. Sherlock does not desire to have a family feud and does not want her brother-in-law involved in litigation and he will not be named in *her* suit.

Again, as discussed, I sincerely hope that we can reach resolution with Mr. Harcourt and Mrs. Sherlock, because, even assuming the evidence could lead a jury to find that Mr. Harcourt more-likely-than-not engaged in unlawful behavior, I am not after Mr. Harcourt. I met Mrs. Sherlock via a third-party that was also defrauded by James Bartell and the group of individuals he works with to defraud other parties of their cannabis CUPs (this is in addition to me as the successor-in-interest to an individual who was defrauded by Mr. Bartell and his group).

Lastly, I want to be completely forthright, I respect Mrs. Sherlock and will fulfill my fiduciary duties regarding *her* representation. However, I had already focused on Mr. Harcourt as a *possible* bad-faith actor that *potentially* worked in concert with Mr. Bartell's criminal organization to defraud his own partner, Mr. Sherlock. This is how they operate and Mr. Harcourt's situation is not the second or even third instance in which Mr. Bartell's group have facilitated an intra-partner dispute and then subsequently ended up owning the disputed CUP. In regards to Mr. Harcourt, if such can be proven to be probably true, such is evidence of my allegation that Mr. Bartell works for a group of individuals who have conspired and taken steps to create a monopoly in the cannabis market in the City of San Diego in violation of antitrust laws.

I am being straightforward about this because even if, for example, Mrs. Sherlock's brother-in-law and sister convince her to forgo any litigation, that does not automatically mean that I will not file suit against Mr. Harcourt. I could do so on the theory that the alleged fraudulent actions he took against Mr. Sherlock were in furtherance of the antitrust conspiracy; and that is even if he only took one unlawful action and thereafter had a falling out with his co-conspirators. *Mox, Inc. v. Woods*, 202 Cal. 675, 678 (1927) ("The advantage gained in charging a conspiracy is that the act of one during the conspiracy is the act of all if done in furtherance thereof, and thus defendants may be held liable who in fact committed no overt act whatsoever and gained no benefit therefrom."); *De Vries v. Brumback*, 53 Cal. 2d 643, 650 (1960) ("In tort 'the major significance of the conspiracy lies in the fact that it renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether or not he was a direct actor and regardless of the degree of his activity.'") (quoting *Mox Inc.,* 202 Cal. at 677); *Roth v. Rhodes*, 25 Cal. App. 4th 530, 544 (1994) (joint and several liability rule of conspiracy applies to antitrust claims brought under Cartwright Act).

Please let me know if our conversation as described above is not accurate and, also, what Mr. Harcourt's explanation is for the alleged disavowment/transfer of the CUP from Mr. Sherlock.

With all this said, I have placed a call to Mrs. Sherlock so we can discuss what terms would be acceptable if she would like to put to rest any dispute with Mr. Harcourt. As soon as I speak with Mrs. Sherlock I will follow up with you.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556

F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Thursday, February 27, 2020 3:04 PM
To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Thank you for speaking with me by phone today. Per our conversation, please let me know the information your client seeks from my client at this time. We can continue our conversation after we discuss more specific items.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Wednesday, February 26, 2020 11:09 AM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I reached out to you in good faith with facts that provided probable cause to believe that your client may have been involved in illegal action. Materially, that Mr. Sherlock and Mr. Harcourt were granted a cannabis CUP via an LLC in mid-2015; Mr. Sherlock allegedly committed suicide on December 3, 2015; and then approximately three weeks later a form is submitted with the state dissolving the LLC that ultimately led to Mr. Harcourt being the sole owner of the CUP. However, Mrs. Sherlock is positive that Mr. Sherlock's signature was forged, a position supported by a

handwriting expert's analysis that I provided you. Those are facts. The inference that Mr. Harcourt may have taken unlawful action to deprive Mrs. Sherlock of her interest in the CUP is a reasonable one. During our phone call, you agreed that the circumstances are "certainly suspicious."

Had you touched base with your client and found out that there was a purchase agreement and proof of payment for a transfer of Mr. Sherlock's interest to Mr. Harcourt, that would have made sense and been credible. Instead, in your reply, your position changed and you describe the reasonable inferences as "speculation" and you allege that you do not see how they can support a claim. Your response evidences how you intend to manage this dispute; there is no need for a telephone call and we can let a court determine whether these facts constitute probable cause.

Please note that your reference to a phone call for "settlement" purposes does not make these emails privileged or confidential. I can and will use these emails to show that Mr. Harcourt was not able to provide any facts for how he ended up being the sole beneficiary of the cannabis CUP as a result of what appears to be a forged signature of Mr. Sherlock, as supported by the facts and evidence I have provided to you.

Please note that even if I do not file on behalf of Mrs. Sherlock., I may still file on my own behalf against Mr. Harcourt as a member of a conspiracy that has unlawfully deprived numerous individuals of cannabis CUPs, including through the use of unethical attorneys who file frivolous litigation. That Mr. Harcourt is now in litigation with Mr. Razuki/Mr. Malan is no different than the dispute between those two as well. Criminals fighting over ill-gotten gains.

Again, if you have any evidence other than self-serving oral testimony by individuals who benefit from the current status quo, please let me know by 5:00 p.m. tomorrow, Thursday, February 27, 2020.

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

From: Allan Claybon <aclaybon@messner.com>
Sent: Tuesday, February 25, 2020 5:33 PM

To: Andrew flores <andrew@floreslegal.pro>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Flores,

Please let me know if we can schedule a telephone call tomorrow to discuss. Mr. Harcourt unequivocally denies each of the allegations against him. With all due respect, these theories and allegations are based upon speculation. I cannot see how any of them support an actionable claim against Mr. Harcourt. But I am willing to have a conversation to guide some understanding on these issues. Let me know of a time that you are available. Our conversation will be for settlement purposes only. Thank you.

Allan B. Claybon
Attorney

Messner Reeves LLP
10866 Wilshire Boulevard | Suite 800
Los Angeles CA 90024
424 276 6214 *direct* | 310 909 7440 *main*
310 889 0896 *fax*
aclaybon@messner.com
messner.com

From: Andrew flores <andrew@floreslegal.pro>
Sent: Tuesday, February 25, 2020 1:38 PM
To: Allan Claybon <aclaybon@messner.com>
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Apologies, pressed sent by accident, please see below for complete email.

Andrew Flores
Attorney at Law
7880 Broadway
Lemon Grove, CA 91945
P. (619) 356-1556
F.(619) 274-8053

From: Andrew flores

Sent: Tuesday, February 25, 2020 1:27 PM
To: aclaybon@messner.com
Subject: RE: Sherlock -Harcourt Leading Edge Real Estate

Mr. Claybon,

I am following up on my message I just left seeking to touch base on your client's reasons, if any, regarding the below. I have discovered additional evidence of bad faith – Mr. Jim Bartell (an influential political lobbyist in San Diego) who is involved in other fraudulent acts related to cannabis CUPs was also part of the Sherlock/Harcourt CUP process. As it stands now, there is evidence to support the argument that your client was working with, among others, Mr. Bartell and Mr. Razuki to defraud Mr. Sherlock of the CUP.

To be blunt, as matters stand, it appears that Mr. Harcourt, as the beneficiary, forged Mr. Sherlock's signature to acquire the CUP. Then, he in turn was defrauded by Mr. Razuki/Mr. Malan. Thereafter, there was a falling out between Mr. Harcourt and Mr. Razuki/Mr. Malan, exactly as there was a subsequent falling out between Mr. Malan and Mr. Razuki, with everyone fighting over the CUP but not addressing the fact that the CUPs were acquired unlawfully. First by Mr. Harcourt and then by Mr. Malan who admits that he had Mr. Razuki acquire the CUP but not disclose him as the true owner of the CUP – in direct violation of City and State laws. See San Diego Municipal Code section 11.0402 and Cal. Bus. and Pro. Code section 26057 *et seq.*

Alternatively, if your client got in over his head, it is doubtful he is aware of the criminal acts taken by the organization Mr. Bartell is part of, then our side would be willing to reach an agreement with Mr. Harcourt. Please let us know if such is the case and an option and we can discuss.

I realize that a few days is not a lot of time, on the other hand, if there is a reasonable, credible and legal reason that can explain how Mr. Harcourt ended up with the CUP as a result of a forged signature, your client should be able to readily explain such. With that said, if I do not hear from you by 5:00 p.m. on Thursday, February 27, 2020, I will assume your client has no evidence to explain the situation. I will proceed accordingly in seeking to protect Mrs. Sherlock's rights.

Andrew Flores
Attorney at Law
945 4th Ave, Suite 412
San Diego CA 92101
P. (619) 356-1556
F.(619) 274-8053

THE LAW OFFICE OF ANDREW FLORES

From: Andrew flores
Sent: Friday, February 21, 2020 12:10 PM
To: aclaybon@messner.com
Subject: Sherlock -Harcourt Leading Edge Real Estate

Hello Mr. Claybon,

Per our conversation this morning please find attached the Certificate of LLC Cancellation in question. I have also included the preliminary report by a forensic document examiner.

Lastly, as a professional courtesy, I want to highlight that I intend to file a lawsuit against no less than ten attorneys for conspiring with their clients to take unlawful actions in marijuana related transactions. I refuse to believe that every attorney in the San Diego area focused on the marijuana industry is willing to take unlawful actions, but as matters stand, it appears to be endemic to the practice. At least in the San Diego market. I am taking the time to explain this because I hope you will convince your client to provide the original certificate with Mr. Sherlock's signature. While the expert has highlighted that the signature is more likely than not someone other than Mr. Sherlock, the actual document could help him reach the opposite conclusion. Alternatively, if your client decides to not produce the original document, and cannot explain why Mr. Sherlock would leave your client the CUP and leave his wife and kids destitute after using their college funds to finance the acquisition of the CUP at the Balboa location, such would be probable cause to file suit on behalf of Mrs. Sherlock against your client.

That is the worst case scenario and something I want to avoid. I already have a big fight ahead of me against Razuki, Malan and numerous other bad faith actors, including attorneys. Alternatively, I hope that your client has evidence and a credible explanation for what appears to be a forged signature that left him with a valuable CUP. If such is the case, I can assure you that I have evidence and witnesses that will help your cause against Razuki and Malan that are part of my case.

Sincerely,

Andrew Flores
Attorney at Law
945 4th Ave Suite 412
San Diego CA, 92101
P. (619) 356-1556
F.(619) 274-8053

EXHIBIT 3

Court's Ex. 034
Case # [redacted]
Rec'd
Dept. [redacted] Clk.

City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

THE CITY OF SAN DIEGO

General Application

FORM DS-3032
AUGUST 2013

Part I (Must be completed for all permits/approvals)

1. **Approval Type:** *Separate electrical, plumbing and/or mechanical permits are required for projects other than single-family residences or duplexes* ☐ Electrical/Plumbing/Mechanical ☐ Sign ☐ Structure ☐ Grading ☐ Public Right-of-Way; ☐ Subdivision ☐ Demolition/Removal ☐ Development Approval ☐ Vesting Tentative Map ☐ Tentative Map ☐ Map Waiver ☑ Other: CUP

2. **Project Address/Location:** *Include Building or Suite No.*: 6176 Federal Blvd.
Project Title: Federal Blvd. MMCC
Project No.: *For City Use Only* 520606
Legal Description: *(Lot, Block, Subdivision Name & Map Number)*: TR#:2 001100 BLK 25*LOT 20 PER MAP 2121 IN* City/Muni/Twp: SAN DIEGO
Assessor's Parcel Number: 543-020-02

Existing Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land
Proposed Use: ☐ House/Duplex ☐ Condominium/Apartment/Townhouse ☑ Commercial/Non-Residential ☐ Vacant Land

Project Description:
The project consists of the construction of a new MMCC facility

3. **Property Owner/Lessee Tenant Name:** *Check one* ☐ Owner ☑ Lessee or Tenant — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

4. **Permit Holder Name** - This is the property owner, person, or entity that is granted authority by the property owner to be responsible for scheduling inspections, receiving notices of failed inspections, permit expirations or revocation hearings, and who has the right to cancel the approval (in addition to the property owner). SDMC Section 113.0103.
Name: Rebecca Berry — Telephone: — Fax:

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

5. **Licensed Design Professional** (if required): (check one) ☑ Architect ☐ Engineer — License No.: C-19371
Name: Michael R Morton AIA — Telephone: — Fax:

Address:	City:	State:	Zip Code:	E-mail Address:
3956 30th Street	San Diego	CA	92104	

6. **Historical Resources/Lead Hazard Prevention and Control (not required for roof mounted electric-photovoltaic permits, deferred fire approvals, or completion of expired permit approvals) -**
a. Year constructed for all structures on project site: 1951
b. HRB Site # and/or historic district if property is designated or in a historic district (if none write N/A): N/A
c. Does the project include any permanent or temporary alterations or impacts to the exterior (cutting-patching-access-repair, roof repair or replacement, windows added-removed-repaired-replaced, etc)? ☑ Yes ☐ No
d. Does the project include any foundation repair, digging, trenching or other site work? ☑ Yes ☐ No

I certify that the information above is correct and accurate to the best of my knowledge. I understand that the project will be distributed/reviewed based on the information provided.

Print Name: Abhay Schweitzer — Signature: [signature] (ink) — Date: 10/28/2016

7. **Notice of Violation** - If you have received a Notice of Violation, Civil Penalty Notice and Order, or Stipulated Judgment, a copy must be provided at the time of project submittal. Is there an active code enforcement violation case on this site? ☐ No ☐ Yes, copy attached

8. **Applicant Name:** *Check one* ☐ Property Owner ☐ Authorized Agent of Property Owner ☑ Other Person per M.C. Section 112.0102 — Telephone: — Fax:
Rebecca Berry

Address:	City:	State:	Zip Code:	E-mail Address:
5982 Gullstrand Street	San Diego	CA	92122	becky@tfcsd.net

Applicant's Signature: I certify that I have read this application and state that the above information is correct, and that I am the property owner, authorized agent of the property owner, or other person having a legal right, interest, or entitlement to the use of the property that is the subject of this application (Municipal Code Section 112.0102). I understand that the applicant is responsible for knowing and complying with the governing policies and regulations applicable to the proposed development or permit. The City is not liable for any damages or loss resulting from the actual or alleged failure to inform the applicant of any applicable laws or regulations, including before or during final inspections. City approval of a permit application, including all related plans and documents, is not a grant of approval to violate any applicable policy or regulation, nor does it constitute a waiver by the City to pursue any remedy, which may be available to enforce and correct violations of the applicable policies and regulations. I authorize representatives of the city to enter the above-identified property for inspection purposes. I have the authority and grant City staff and advisory bodies the right to make copies of any plans or reports submitted for review and permit processing for the duration of this project.

Signature: Rebecca Berry — Date: Oct. 31 2016

Printed on recycled paper. Visit our web site at www.sandiego.gov/development-services.
Upon request, this information is available in alternative formats for persons with disabilities.

DS-3032 (08-13)

0061

Trial Ex. 034-001

EXHIBIT 4

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 5

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 3:11 PM
To: Darryl Cotton <darryl@inda-gro.com>

Best Regards,

Larry E. Geraci, EA

Tax & Financial Center, Inc
5402 Ruffin Rd, Ste 200
San Diego, Ca 92123

Web: Larrygeraci.com
Bus: 858.576.1040
Fax: 858.630.3900

Circular 230 Disclaimer:

IRS regulations require us to advise you that, unless otherwise specifically noted, any federal tax advice in this communication (including any attachments, enclosures, or other accompanying materials) was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding penalties; furthermore, this communication was not intended or written to support the promotion or marketing of any of the transactions or matters it addresses. This email is considered a confidential communication and is intended for the person or firm identified above. If you have received this in error, please contact us at (858)576-1040 and return this to us or destroy it immediately. If you are in possession of this confidential information, and you are not the intended

recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or dissemination of the contents hereof is strictly prohibited. Please notify the sender of this facsimile immediately and arrange for the return or destruction of this facsimile and all attachments.

Cotton & Geraci Contract.pdf
71K

Exhibit B

(November 2nd Agreement)

Trial Ex. 040-003

11/02/2016

Agreement between Larry Geraci or assignee and Darryl Cotton:

Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)

Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed to not enter into any other contacts on this property.

Larry Geraci

Darryl Cotton

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego)

On November 2, 2016 before me, Jessica Newell Notary Public
(insert name and title of the officer)

personally appeared Darryl Cotton and Larry Geraci,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JESSICA NEWELL
Commission # 2002598
Notary Public - California
San Diego County
My Comm. Expires Jan 27, 2017

Signature _____ (Seal)

EXHIBIT 6

Gmail Darryl Cotton <indagrodarryl@gmail.com>

Agreement

Larry Geraci <Larry@tfcsd.net> Wed, Nov 2, 2016 at 9:13 PM
To: Darryl Cotton <darryl@inda-gro.com>

No no problem at all

Sent from my iPhone

On Nov 2, 2016, at 6:55 PM, Darryl Cotton <darryl@inda-gro.com> wrote:

> Hi Larry,
>
> Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.
>
> Regards.

Darryl Cotton, President

darryl@inda-gro.com
www.inda-gro.com
Ph: 877.452.2244
Cell: 619.954.4447
Skype: dc.dalbercia

6176 Federal Blvd.
San Diego, CA. 92114
USA

[Quoted text hidden]

EXHIBIT 7

FERRIS & BRITTON
A Professional Corporation
Michael R. Weinstein (SBN 106464)
Scott H. Toothacre (SBN 146530)
501 West Broadway, Suite 1450
San Diego, California 92101
Telephone: (619) 233-3131
Fax: (619) 232-9316
mweinstein@ferrisbritton.com
stoothacre@ferrisbritton.com

Attorneys for Plaintiff/Cross-Defendant LARRY GERACI and Cross-Defendant REBECCA BERRY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

LARRY GERACI, an individual, REBECCA BERRY, an individual, and DOES 1 THROUGH 10, INCLUSIVE,

Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

DECLARATION OF LARRY GERACI IN OPPOSITION TO DEFENDANT DARRYL COTTON'S MOTION TO EXPUNGE LIS PENDENS

[IMAGED FILE]

Hearing Date: April 13, 2018
Hearing Time: 9:00 a.m.

Filed: March 21, 2017
Trial Date: May 11, 2018

I, Larry Geraci, declare:

1. I am an adult individual residing in the County of San Diego, State of California, and I am one of the real parties in interest in this action. I have personal knowledge of the foregoing facts and if called as a witness could and would so testify.

2. In approximately September of 2015, I began lining up a team to assist in my efforts to develop and operate a Medical Marijuana Consumer Cooperative (MMCC) business (aka a medical

marijuana dispensary) in San Diego County. At the time, I had not yet identified a property for the MMCC business. I hired a consultant, Neal Dutta of Apollo Realty, to help locate and identify potential property sites for the business. I hired a design professional, Abhay Schweitzer of TECHNE. I hired a public affairs and public relations consultant with experience in the industry, Jim Bartell of Bartell & Associates. In addition, I hired a land use attorney, Gina Austin of Austin Legal Group.

3. The search to identify potential locations for the business took some time, as there are a number of requirements that had to be met. For example: a) only four (4) MMCCs are allowed in a City Council District; b) MMCCs are not allowed within 1,000 feet of public parks, churches, child care centers, playgrounds, City libraries, minor-oriented facilities, other MMCCs, residential facilities, or schools; c) MMCCs are not allowed within 100 feet of a residential zone; and d) the zoning had to be proper as MMCC's are allowed only in certain zones. In approximately June 2016, Neal Dutta identified to me real property owned by Darryl Cotton located at 6176 Federal Blvd., City of San Diego, San Diego County, California, Assessor's Parcel No. 543-020-02-00 (the "Property") as a potential site for acquisition and development for use and operation as a MMCC. And in approximately mid-July 2016 Mr. Dutta put me in contact with Mr. Cotton and I expressed my interest to Mr. Cotton in acquiring his Property if our further investigation satisfied us that the Property might meet the requirements for an MMCC site.

4. For several months after the initial contact, my consultant, Jim Bartell, investigated issues related to whether the location might meet the requirements for an MMCC site, including zoning issues and issues related to meeting the required distances from certain types of facilities and residential areas. For example, the City had plans for street widening in the area that potentially impacted the ability of the Property to meet the required distances. Although none of these issues were resolved to a certainty, I determined that I was still interested in acquiring the Property.

5. Thereafter I approached Mr. Cotton to discuss the possibility of my purchase of the Property. Specifically, I was interested in purchasing the Property from Mr. Cotton contingent upon my obtaining approval of a Conditional Use Permit ("CUP") for use as a MMCC. As the purchaser, I was willing to bear the substantial expense of applying for and obtaining CUP approval and understood that if I did not obtain CUP approval then I would not close the purchase and I would lose my

investment. I was willing to pay a price for the Property based on what I anticipated it might be worth if I obtained CUP approval. Mr. Cotton told me that he was willing to make the purchase and sale conditional upon CUP approval because if the condition was satisfied he would be receiving a much higher price than the Property would be worth in the absence of its approval for use as a medical marijuana dispensary. We agreed on a down payment of $10,000.00 and a purchase price of $800,000.00. On November 2, 2016, Mr. Cotton and I executed a written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement (hereafter the "Nov 2nd Written Agreement"). A true and correct copy of the Nov 2nd Written Agreement, which was executed before a notary, is attached as Exhibit 2 to Defendant and Cross-Defendant, Larry Geraci's Notice of Lodgment in Support of Opposition to Motion to Expunge Lis Pendens (hereafter the "Geraci NOL"). I tendered the $10,000 deposit to Mr. Cotton as acknowledged in the Nov 2nd Written Agreement.

6. In paragraph 5 of his supporting declaration, Darryl Cotton states:

> "On November 2, 2016, Geraci and I met at Geraci's office to negotiate the final terms of the sale of the Property. At the meeting, we reached an oral agreement on the material terms for the sale of the Property (the "November Agreement"). The November Agreement consisted of the following: If the CUP was approved, then Geraci would, inter alia, provide me: (i) a total purchase price of $800,000; (ii) a 10% equity stake in the MO; and (iii) a minimum monthly equity distribution of $10,000. If the CUP was denied, I would keep an agreed upon $50,000 non-refundable deposit ("NRD") and the transaction would not close. In other words, the issuance of a CUP at the Property was a condition precedent for closing on the sale of the Property and, if the CUP was denied, I would keep my Property and the $50,000 NRD."

Darryl Cotton and I did meet at my office on November 2, 2016, to negotiate the final terms of the sale of the Property and we reached an agreement on the final terms of the sale of the Property. That agreement was not oral. We put our agreement in writing in a simple and straightforward written

agreement that we both signed before a notary. (See paragraph 5, *supra*, Nov 2nd Written Agreement, Exhibit 2 to Geraci NOL.) The written agreement states in its entirety:

> **11/02/2016**
>
> **Agreement between Larry Geraci or assignee and Darryl Cotton:**
>
> **Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd., CA for a sum of $800,000 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary.)**
>
> **Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license is approved. Darryl Cotton has agreed to not enter into any other contacts [sic] on this property.**
>
> **__/s/_____ __/s/_____**
> **Larry Geraci Darryl Cotton**

I never agreed to pay Mr. Cotton a $50,000.00 non-refundable deposit. At the meeting, Mr. Cotton stated he would like a $50,000 non-refundable deposit. I said "no." Mr. Cotton then asked for a $10,000 non-refundable deposit and I said "ok" and that amount was put into the written agreement. After he signed the written agreement, I paid him the $10,000 cash as we had agreed. If I had agreed to pay Mr. Cotton a $50,000 deposit, it would have been a very simple thing to change "$10,000" to $50,000" in the agreement before we signed it.

I never agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary. I never agreed to pay Mr. Cotton a minimum monthly equity distribution of $10,000. If I had agreed to pay Mr. Cotton a 10% equity stake in the marijuana dispensary and a minimum monthly equity distribution of $10,000, then it would have also been a simple thing to add a sentence or two to the agreement to say so.

What I did agree to was to pay Mr. Cotton a total purchase price of $800,000, with the balance of $790,000 due upon approval of a CUP. If the CUP was not approved, then he would keep the Property and the $10,000. So that is how the agreement was written.

7. In paragraph 6 of his supporting declaration, Darryl Cotton states:

> "At the November 2, 2016, meeting we reached the November Agreement, Geraci: (i) provided me with $10,000 in cash towards the NRD of $50,000, for which I executed a document to record my receipt thereof (the "Receipt"); (ii)

promised to have his attorney, Gina Austin ("Austin"), ***promptly*** reduce the oral November Agreement to written agreements for execution; and (iii) promised to not submit the CUP to the City until he paid me the balance of the NRD."

I did pay Mr. Cotton the $10,000 cash after we signed the Nov 2nd Written Agreement. As stated above, I never agreed to a $50,000 deposit and, if I had, it would have been a simple thing to state that in our written agreement.

Mr. Cotton refers to the written agreement (i.e., the Nov 2nd Written Agreement) as a "Receipt." Calling the Agreement a "Receipt" was never discussed. There would have been no need for a written agreement before a notary simply to document my payment to him of $10,000. In addition, had the intention been merely to document a written "Receipt" for the $10,000 payment, then we could have identified on the document that it was a "Receipt" and there would have been no need to put in all the material terms and conditions of the deal. Instead, the document is expressly called an "Agreement" because that is what we intended.

I did not promise to have attorney Gina Austin reduce the oral agreement to written agreements for execution. What we did discuss was that Mr. Cotton wanted to categorize or allocate the $800,000. At his request, I agreed to pay him for the property into two parts: $400,000 as payment for the property and $400,000 as payment for the relocation of his business. As this would benefit him for tax purposes but would not affect the total purchase price or any other terms and conditions of the purchase, I stated a willingness to later amend the agreement in that way.

I did not promise to delay submitting the CUP to the City until I paid the alleged $40,000 balance of the deposit. I agreed to pay a $10,000 deposit only. Also, we had previously discussed the long lead-time to obtain CUP approval and that we had already begun the application submittal process as discussed in paragraph 8 below.

8. Prior entering into the Nov 2nd Written Agreement, Darryl Cotton and I discussed the CUP application and approval process and that his consent as property owner would be needed to submit with the CUP application. I discussed with him that my assistant Rebecca Berry would act as my authorized agent to apply for the CUP on my behalf. Mr. Cotton agreed to Ms. Berry serving as

the Applicant on my behalf to attempt to obtain approval of a CUP for the operation of a MMCC or marijuana dispensary on the Property. On October 31, 2016, as owner of the Property, Mr. Cotton signed Form DS-318, the Ownership Disclosure Statement for a Conditional Use Permit, by which he acknowledged that an application for a permit (CUP) would be filed with the City of San Diego on the subject Property with the intent to record an encumbrance against the property. The Ownership Disclosure Statement was also signed by my authorized agent and employee, Rebecca Berry, who was serving as the CUP applicant on my behalf. A true and correct copy of the Ownership Disclosure Statement signed on October 31, 2016, by Darryl Cotton and Rebecca Berry is attached as Exhibit 1 to the Geraci NOL. Mr. Cotton provided that consent and authorization as we had discussed that approval of a CUP would be a condition of the purchase and sale of the Property.

9. As noted above, I had already put together my team for the MMCC project. My design professional, Abhay Schweitzer, and his firm, TECHNE, is and has been responsible for the design of the Project and the CUP application and approval process. Mr. Schweitzer was responsible for coordinating the efforts of the team to put together the CUP Application for the MMCC at the Property and Mr. Schweitzer has been and still is the principal person involved in dealings with the City of San Diego in connection with the CUP Application approval process. Mr. Schweitzer's declaration (Declaration of Abhay Schweitzer in Support of Opposition to Motion to Expunge Lis Pendens) has been submitted concurrently herewith and describes in greater detail the CUP Application submitted to the City of San Diego, which submission included the Ownership Disclosure Statement signed by Darryl Cotton and Rebecca Berry.

10. After we signed the Nov 2nd Written Agreement for my purchase of the Property, Mr. Cotton immediately began attempts to renegotiate our deal for the purchase of the Property. This literally occurred the evening of the day he signed the Nov 2nd Written Agreement.

On November 2, 2016, at approximately 6:55 p.m., Mr. Cotton sent me an email, which stated:

> Hi Larry,
>
> Thank you for meeting today. Since we examined the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored

> element in my decision to sell the property. I'll be fine if you simply acknowledge that here in a reply.

I receive my emails on my phone. It was after 9:00 p.m. in the evening that I glanced at my phone and read the first sentence, "Thank you for meeting with me today." And I responded from my phone "No no problem at all." I was responding to his thanking me for the meeting.

The next day I read the entire email and I telephoned Mr. Cotton because the total purchase price I agreed to pay for the subject property was $800,000 and I had never agreed to provide him a 10% equity position in the dispensary as part of my purchase of the property. I spoke with Mr. Cotton by telephone at approximately 12:40 p.m. for approximately 3-minutes. A true and correct copy of the Call Detail from my firm's telephone provider showing those two telephone calls is attached as Exhibit 3 to the Geraci NOL. During that telephone call I told Mr. Cotton that a 10% equity position in the dispensary was not part of our agreement as I had never agreed to pay him any other amounts above the $800,000 purchase price for the property. Mr. Cotton's response was to say something to the effect of "well, you don't get what you don't ask for." He was not upset and he commented further to the effect that things are "looking pretty good—we all should make some money here." And that was the end of the discussion.

11. To be clear, prior to signing the Nov 2nd Written Agreement, Mr. Cotton expressed a desire to participate in different ways in the *operation* of the future MMCC business at the Property. Mr. Cotton is a hydroponic grower and purported to have useful experience he could provide regarding the operation of such a business. Prior to signing the Nov 2nd Written Agreement we had preliminary discussions related to his desire to be involved in the *operation* of the business (not related to the purchase of the Property) and we discussed the *possibility* of compensation to him (e.g., a percentage of the net profits) in exchange for his providing various services to the business—but we never reached an agreement as to those matters related to the operation of my future MMCC business. Those discussions were not related to the purchase and sale of the Property, which we never agreed to amend or modify.

12. Beginning in or about mid-February 2017, and after the zoning issues had been resolved, Mr. Cotton began making increasing demands for compensation in connection with the sale. We were several months into the CUP application process which could potentially take many more months to

successfully complete (if it could be successfully completed and approval obtained) and I had already committed substantial resources to the project. I was very concerned that Mr. Cotton was going to interfere with the completion of that process to my detriment now that the zoning issues were resolved. I tried my best to discuss and work out with him some further compensation arrangement that was reasonable and avoid the risk he might try to "torpedo" the project and find another buyer. For example, on several successive occasions I had my attorney draft written agreements that contained terms that I that I believed I could live with and hoped would be sufficient to satisfy his demands for additional compensation, but Mr. Cotton would reject them as not satisfactory. Mr. Cotton continued to insist on, among other things, a 10% equity position, to which I was not willing to agree, as well as on minimum monthly distributions in amounts that I thought were unreasonable and to which I was unwilling to agree. Despite our back and forth communications during the period of approximately mid-February 2017 through approximately mid-March 2017, we were not able to re-negotiate terms for the purchase of the property to which we were both willing to agree. The Nov. 2nd Written Agreement was never amended or modified. Mr. Cotton emailed me that I was not living up to my agreement and I responded to him that he kept trying to change the deal. As a result, no re-negotiated written agreement regarding the purchase and sale of the property was ever signed by Mr. Cotton or me after we signed and agreed to the terms and conditions in the Nov 2d Written Agreement.

13. Ultimately, Mr. Cotton was extremely unhappy with my refusal to accede to his demands and the failure to reach agreement regarding his possible involvement with the *operation* of the business to be operated at the Property and my refusal to modify or amend the terms and conditions we agreed to in the Nov 2nd Written Agreement regarding my purchase from him of the Property. Mr. Cotton made clear that he had no intention of living up to and performing his obligations under the Agreement and affirmatively threatened to take action to halt the CUP application process.

14. Mr. Cotton thereafter made good on his threats. On the morning of March 21, 2017, Mr. Cotton had a conversation with Firouzeh Tirandazi at the City of San Diego, who was in charge of processing the CUP Application, regarding Mr. Cotton's interest in withdrawing the CUP Application. That discussion is confirmed in an 8:54 a.m. e-mail from Ms. Tirandazi to Mr. Cotton with a cc to

Rebecca Berry. A true and correct copy of that March 21, 2017, at 8:54 a.m. e-mail is attached as Exhibit 4 to the Geraci NOL.

15. That same day, March 21, 2017, at 3:18 p.m. Mr. Cotton emailed me, reinforcing that he would not honor the Nov 2nd Written Agreement. In his email he stated that I had no interest in his property and that "I will be entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. A true and correct copy of that March 21, 2017, at 3:18 p.m. e-mail is attached as Exhibit 5 to the Geraci NOL.

16. Four minutes later that same day, at 3:25 p.m., Mr. Cotton e-mailed Ms. Tirandazi at the City, with a cc to both me and Rebecca Berry, stating falsely to Ms. Tirandazi: "… the potential buyer, Larry Gerasi [sic] (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property. A true and correct copy of that March 21, 2017, at 3:25 p.m. e-mail is attached as Exhibit 6 to the Geraci NOL. Mr. Cotton's email was false as we had a signed agreement for the purchase and sale of the Property – the Nov 2nd Written Agreement.

17. Fortunately, the City determined Mr. Cotton did not have the authority to withdraw the CUP application without the consent of the Applicant (Rebecca Berry, my authorized agent).

18. Due to Mr. Cotton's clearly stated intention to not perform his obligations under the written Agreement and in light of his affirmative steps taken to attempt to withdraw the CUP application, I went forward on March 21, 2017, with the filing of my lawsuit against Mr. Cotton to enforce the Nov 2nd Written Agreement.

19. Since the March 21, 2017 filing of my lawsuit, we have continued to diligently pursue our CUP Application and approval of the CUP. Despite Mr. Cotton's attempts to withdraw the CUP application, we have completed the initial phase of the CUP process whereby the City deemed the CUP application complete (although not yet approved) and determined it was located in an area with proper zoning. We have not yet reached the stage of a formal City hearing and there has been no final determination to approve the CUP. The current status of the CUP Application is set forth in the

Declaration of Abhay Schweitzer.

20. Mr. Cotton also has made good on the statement in his March 21, 2017, at 3:18 p.m. email (referenced in paragraph 15 above - see Exhibit 5 to the Geraci NOL) stating that he would be "entering into an agreement with a third party to sell my property and they will be taking on the potential costs associated with any litigation arising from this failed agreement with you. We have learned through documents produced in my lawsuit that well prior to March 21, 2017, Mr. Cotton had been negotiating with other potential buyers of the Property to see if he could get a better deal than he had agreed to with me. As of March 21, 2017, Cotton had already entered into a real estate purchase and sale agreement to sell the Property to another person, Richard John Martin II.

21. Although he entered into this alternate purchase agreement with Mr. Martin as early as March 21, 2017, to our knowledge in the nine (9) months since, neither Mr. Cotton nor Mr. Martin or other agent has submitted a separate CUP Application to the City for processing. During that time, we continued to process our CUP Application at great effort and expense.

22. During approximately the last 17 months, I have incurred substantial expenses in excess of $150,000 in pursuing the MMCC project and the related CUP application.

23. Finally, Mr. Cotton has asserted from the outset of his lawsuit and, again, in paragraph 16 of his supporting declaration, that he did not discover until March 16, 2017, that I had submitted the CUP Application back on October 31, 2016. That is a blatant lie. I kept Mr. Cotton apprised of the status of the CUP application and the problems we were encountering (e.g., an initial zoning issue) from the outset. Attached as Exhibit 7 is a true and correct copy of a text message Mr. Cotton sent me on November 16, 2016, in which he asks me, "Did they accept the CUP application?" Mr. Cotton was well aware at that time that we had already submitted the CUP application and were awaiting the City's completion of its initial review of the completeness of the application. Until the City deems the CUP application complete it does not proceed to the next step—the review of the CUP application.

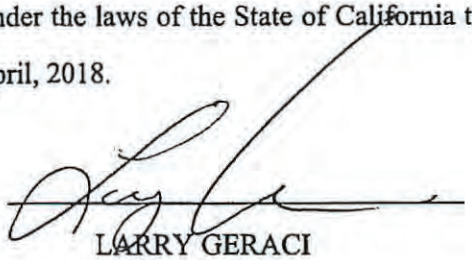
/ / /

/ / /

/ / /

/ / /

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 9th day of April, 2018.



LARRY GERACI

EXHIBIT 8

PROOF OF SERVICE (Court of Appeal)

☐ **Mail** ☒ **Personal Service**

Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form. Do not use this form for proof of electronic service. See form APP-009E.

Case Name: Larry Geraci v. Darryl Cotton, et al.

Court of Appeal Case Number: TBD

Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**

2. My ☐ residence ☒ business address is *(specify)*:
   1455 Frazee Road, Suite 500, San Diego, CA 92108

3. I mailed or personally delivered a copy of the following document as indicated below *(fill in the name of the document you mailed or delivered and complete either a or b)*:
   Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief; Exhibits Volumes 1, 2 and 3, and Request for Judicial Notice in Support of Petition for Writ of Mandate/Supersedeas and/or Other Appropriate Relief

   a. ☐ **Mail.** I mailed a copy of the document identified above as follows:

      (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**

         (a) ☐ **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.

         (b) ☐ **placed** the envelope(s) for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

      (2) Date mailed:

      (3) The envelope was or envelopes were addressed as follows:

         (a) Person served:
            (i) Name:
            (ii) Address:

         (b) Person served:
            (i) Name:
            (ii) Address:

         (c) Person served:
            (i) Name:
            (ii) Address:

         ☐ Additional persons served are listed on the attached page *(write "APP-009, Item 3a" at the top of the page).*

      (4) I am a resident of or employed in the county where the mailing occurred. The document was mailed from (city and state): San Diego, California

Case Name: Larry Geraci v. Darryl Cotton, et al.	Court of Appeal Case Number: TBD
	Superior Court Case Number: 37-2017-00010073-CU-BC-CTL

3. b. [x] **Personal delivery.** I personally delivered a copy of the document identified above as follows:

(1) Person served:

(a) Name: Gina M. Austin, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(2) Person served:

(a) Name: Austin Legal Group, APC, a California corporation

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

(3) Person served:

(a) Name: Gina M. Austin/Austin Legal Group, APC Attorneys for Aaron Magagna, an individual

(b) Address where delivered:
Austin Legal Group
3990 Old Town Avenue, Suite A-112
San Diego, CA 92110

By serving: Gina Austin

TELEPHONE: (619) 924-9600

(c) Date delivered: August 27, 2018

(d) Time delivered: 4:37 p.m.

[ ] Names and addresses of additional persons served and delivery dates and times are listed on the attached page *(write "APP-009, Item 3b" at the top of the page).*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 27, 2018

Jacob P. Austin
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

ATTACHMENT TO APP-009, ITEM 3b(3)

On Monday, August 27, 2018 at 4:37 p.m., I visited the office of attorney Gina Austin [SBN 246833] ("Mrs. Austin")/Austin Legal Group, APC to serve copies of the documents listed as ITEM 3 on page 1 on the individuals and entities listed in ITEM 3b(1)-(3).

When I arrived, the receptionist was not at the reception desk in the front office. Shortly thereafter, Mrs. Austin came from the back office to the reception desk to greet me. I told Mrs. Austin that I was there to serve documents – all of which were the correct copies of the Petition that had been personally served on her office the previous week.

Mrs. Austin responded that she wanted to look at copies of the Proofs of Service, and I told her that I was leaving copies for her and the Proofs of Service stated that I was serving her with three sets of the documents: one set on her as an individual, one set on her on behalf of her law firm Austin Legal Group, APC, and one set on her on behalf of her client Aaron Magagna.

Mrs. Austin then took two sets of the documents, told me she did not "want" the third set of documents, and then shoveled me out the door. After standing outside and thinking about the situation, I walked back into the office at 4:39 p.m. and told Mrs. Austin that, since I was there, I was going to leave the third set of documents with her anyway. She responded very emphatically, "I don't want this!" I shrugged and said that I was leaving the documents with her.

Mrs. Austin became very angry and approached me quickly as though she was going to physically shove me out the door and said, "You're not welcome here!" Barely restraining herself from physically shoving me, as she got within inches of me she forcefully opened the door into the hallway, she then snatched the third set of documents and threw them into the hallway repeating in a loud, angry tone, "I told you, I DO NOT WANT THIS!!!"

I did not argue or resist leaving, I left at that point. I was wildly surprised by the unexpected reaction, the anger exhibited towards me, and how my personal space was violated. As an attorney I was disappointed in her decorum and unprofessional demeanor.

EXHIBIT 9

Gmail

Darryl Cotton <indagrodarryl@gmail.com>

Testimony

Corina Young <corina.young@live.com> Wed, Oct 28, 2020 at 12:22 PM
To: Darryl Cotton <indagrodarryl@gmail.com>

Darryl,

I am not involved. Please do not include me in your lawsuit. Please do not post this email online.

A ached are emails from my a orney at the me.

Corina

2 attachments

Email #1.pdf
299K

Email 2.pdf
133K

Attachment Email 1

FW: Geraci v. Cotton [Deposition Subpoena - Corina Young]

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Tue 7/2/2019 12:01 PM
To: 'Corina Young' <corina.young@live.com>

1 attachments (10 KB)
190627.Tentative Rulings on Motions in Limine.pdf;

Good morning Corina,

I hope this email finds you well. I haven't heard back from you so I assume you are occupied with other importance.

As an update, below is the last email from Cotton's attorney. In light of the trial dates, I presumed he was bluffing so I just ignored him.

The court issued its ruling on the parties' Motions in Limine in the Geraci v. Cotton trial last week. If you are bored or curious, it is attached for your review. The Trial was supposed to start July 1 but it looks as if someone (likely Cotton's attorney) filed an appeal and so trial was taken off calendar. I'll keep you apprised of this but for the moment, there's nothing you really need to do.

Yours,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Wednesday, June 12, 2019 6:45 PM
To: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Ms. Nguyen,

Trial on the Geraci v. Cotton case in which your client, Corina Young, is a material witness is immediately impending and you have yet to deliver on any of the items we had previously agreed upon.

At this point in time it is too late to rely on you to uphold your promises without a proper demand. I need you to provide a declaration by end of week or I will have to file a motion for sanctions against you personally, and re-issue a subpoena.

Let me know by the end of the day Friday if you will provide the declaration requested or not so I can proceed accordingly.

Jacob

Law Office of Jacob Austin
P.O. Box 231189
San Diego, CA 92193 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Tue, May 28, 2019 at 10:20 AM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Ms. Young's original deposition was scheduled for Jan. 18th and we agreed to your request that she provide a declaration instead. It has been over 4 months and we have yet to receive anything. Please provide an update.
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Fri, May 3, 2019 at 12:04 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Good morning Jake,
> >
> > Thanks for following up. Let me check and get back to you soon.
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, May 2, 2019 11:56 AM
> > **To:** Natalie T. Nguyen <natalie@nguyenlawcorp.com>
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Please give me an update, this is important to my client's case.
> >
> > Jacob
> > **Law Office of Jacob Austin**
> > P.O. Box 231189
> > San Diego, CA 92193 USA
> > Phone: (619) 357-6850
> > Facsimile: (888) 357-8501
> >
> > *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*

On Tue, Apr 16, 2019 at 6:15 PM Jake Austin <jpa@jacobaustinesq.com> wrote:

> Hello Natalie,
>
> As you recall we have been trying to work out an affidavit or a deposition for three months now, can you kindly give me an update on Ms. Young?
>
> Jacob
> **Law Office of Jacob Austin**
> P.O. Box 231189
> San Diego, CA 92193 USA
> Phone: (619) 357-6850
> Facsimile: (888) 357-8501
>
> *The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) designated above. This e-mail may be attorney-client communication, and as such, is privileged and confidential. If the reader of this e-mail is not the intended recipient or any agent responsible for delivering it to the intended recipient, you are notified that you have received this e-mail in error and any review, distribution or copying is prohibited. If you have received this e-mail in error, please notify the sender immediately and delete this document.*
>
> On Thu, Mar 7, 2019 at 1:45 PM <natalie@nguyenlawcorp.com> wrote:
>
> > Hi Jacob,
> >
> > Ms. Young is out of town on March 11 so she will not be able to attend the deposition as noticed. Our Objection to the Deposition Notice is attached.
> >
> > Despite her limited availability, we maintain the intention to provide you with a written statement as previously agreed. I hope to have it ready sometime next week.
> >
> > Best regards,
> >
> > Natalie
> >
> > Natalie T. Nguyen, Esq.
> > **NGUYEN LAW CORPORATION**
> > M: 2260 Avenida de la Playa | La Jolla, CA 92037
> > T: 858-225-9208
> > E: natalie@nguyenlawcorp.com
> >
> > **From:** Jake Austin <jpa@jacobaustinesq.com>
> > **Sent:** Thursday, February 28, 2019 2:05 PM
> > **To:** natalie@nguyenlawcorp.com
> > **Subject:** Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]
> >
> > Hello,
> >
> > I haven't heard from you for awhile so just so you know my office is generating a subpoena for a deposition. We hope we do not need a deposition so if you can provide an affidavit that would be greatly appreciated. Also can we agree to accept electronic service from one another moving forward?
> >
> > Jacob
> >
> > On Mon, Jan 21, 2019 at 3:09 PM <natalie@nguyenlawcorp.com> wrote:
> >
> > > Hi Jacob,

I closely reviewed the Declaration of Joe Hurtado and the text message exchange attached thereto. I also discussed your proposal:

"Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

with Ms. Young and she's accepted the same. We will provide a sworn written testimony by Ms. Young as described above.

Best regards,

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Natalie T. Nguyen <natalie@nguyenlawcorp.com>
Sent: Thursday, January 17, 2019 5:23 PM
To: 'Jake Austin' <jpa@jacobaustinesq.com>
Subject: RE: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hi Jacob,

Thank you for taking the time to lay it all out for me. My grasp of this case is limited to the online register of action, the minute order to continue trial, and the deposition subpoena. However, I'm only representing a third-party witness so I see no reason to be embroiled in the case. Perhaps it's best this way.

I quickly scanned the attachment you sent, mostly the text message exchange. I gather there's some complicated history between the parties. In any event, I don't see an issue with a providing a sworn statement.

I intend to review your email and attachment more closely tomorrow and discuss your proposal with Mr. Young. I will reach back out to you after that.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 11440 West Bernardo Court, Suite 210 | San Diego, CA 92127
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: Jake Austin <jpa@jacobaustinesq.com>
Sent: Thursday, January 17, 2019 4:55 PM
To: natalie@nguyenlawcorp.com
Subject: Re: Geraci v. Cotton [Deposition Subpoena - Corina Young]

Hello Natalie,

This is an awkward situation, so I will be direct. Your client has repeatedly communicated that she is hostile to my client and will not provide her deposition to material matters that are crucial to my client. Thus, your unilateral decision to cancel the deposition because I did not respond with an alternative to her deposition is procedural improper and, in light of her long history of seeking to avoid being deposed, is suspect.

I can inform you that one of the parties on our side went through Stage III cancer and so we are aware of the challenges that dealing with cancer treatments takes on a patient and their loved ones. However, because of that, we also know that there will never be a "good" time in that context to be deposed.
I am not sure how deeply you are aware of the facts in this matter, so I will not assume you are purposefully being antagonistic and will not file a motion to compel your client's attendance and seek sanctions.

With that said, we understand your client is in a tough situation, which is what makes her testimony highly relevant and credible to our case. In your prior email you state that we can discuss "alternatives to her sitting for the deposition" and since it wasn't a request to reschedule, I have been racking my brain for an alternative to having her go through a deposition which I know could be tedious and stressful on its own. I also know that she may be hesitant to discuss certain subjects and may rely on the right against self-incrimination in some of her responses. I am not sure how familiar you are with the underlying case, but it is my belief that Ms. Young has not been involved in the acts that underline the causes of action and it is not my intention to name her in any lawsuit or anything to that effect.
To be specific, the facts which we hope to elicit from Ms.
Young have already been provided ***by*** her in her text messages with Mr. Hurtado. Attached hereto is a declaration from Mr. Hurtado that in turn has exhibits of text messages between him and Ms. Young regarding the subjects that we desire to depose Ms. Young on. The only additional facts we would want established, beyond those in her text messages, is a description of how long and how many interactions she has had with the parties at issue in this litigation and in the text messages.

What should be clear is that Ms. Young has known the parties associated with Mr. Geraci significantly longer and has established professional relationships with them, as opposed to the limited number of times she has met Mr. Cotton and Mr. Hurtado with whom she only had a couple of interactions with (setting aside her communications related to not wanting to be involved in this litigation to Mr. Hurtado).

Thus, to simplify the matter, if Ms. Young can provide her sworn written testimony stating that all of the statements in the text messages were true or she believed them to be true when she said them, along with a description of the length and nature of her relationships with the parties identified in the text messages, we can forgo her deposition.

Please confirm if your client is willing to provide such sworn testimony. If not, please let me know if your client is available to be deposed any day next week between Wednesday through Friday.
Please note that the trial calendar requires us to file a motion for summary judgement on or before February 8, 2019. As you know, getting transcripts back and drafting an MSJ is time

consuming, so, unfortunately, we are not in a position to push back her deposition for any prolong period of time.
Thus, if you cannot agree to providing her sworn testimony as described above, or having her deposition taken sometime next week, in the interests of my client's case, I will be forced to file an ex-parte application seeking to compel her deposition.

Lastly, again, my apologies for this direct and confrontational email. However, given Ms. Young's repeated statements, the nearing MSJ deadline, and the actions by the attorneys for Mr. Geraci, which I have already gone on record of stating and believing to be tantamount to fraud, I hope you can appreciate that I am attempting to manage this situation for Ms. Young as best as possible. The bottom line is that Ms. Young's testimony provides damaging evidence against her own attorney and agents and I realize the uncomfortable position she is in.

I am open to alternatives and discussions, but Ms. Young's testimony is material and crucial. If you would like to discuss this issue further, I will make myself available to you.

Jacob

On Tue, Jan 15, 2019 at 1:05 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,
>
> I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?
>
> Best regards,
>
> Natalie
>
> Natalie T. Nguyen, Esq.
> **NGUYEN LAW CORPORATION**
> M: 2260 Avenida de la Playa | La Jolla, CA 92037
> T: 858-225-9208
> E: natalie@nguyenlawcorp.com

Law Office of Jacob Austin
1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

On Wed, Jan 16, 2019 at 3:39 PM <natalie@nguyenlawcorp.com> wrote:

> Hi Jacob,

I did not receive a response from you. Please note that for the reasons set forth in my email below, Ms. Young is unable and will not attend the deposition you set for this Friday, January 18, 2019, at 10:00 am. Please kindly contact my office before setting another deposition date.

Best regards,

Natalie

Natalie T. Nguyen, Esq.
NGUYEN LAW CORPORATION
M: 2260 Avenida de la Playa | La Jolla, CA 92037
T: 858-225-9208
E: natalie@nguyenlawcorp.com

From: natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Sent: Tuesday, January 15, 2019 1:05 PM
To: JPA@jacobaustinesq.com
Subject: Geraci v. Cotton [Deposition Subpoena - Corina Young]
Importance: High

Hi Jacob,

I left you a voicemail earlier and I do hope we can connect today. Our firm represents Corina Young, whose deposition you set for this Friday, January 18, 2019. Ms. Young is caring for a parent with brain cancer so she has very little time and a lot on her mind. Can we discuss alternatives to her sitting for the deposition on Friday?

Best regards,

Natalie

Natalie T. Nguyen, Esq.
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--
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1455 Frazee Rd. Suite 500
San Diego, CA 92108 USA
Phone: (619) 357-6850
Facsimile: (888) 357-8501

Attachment Email 2

Geraci v Cotton

natalie@nguyenlawcorp.com <natalie@nguyenlawcorp.com>
Mon 7/22/2019 11:24 AM
To: 'Corina Young' <corina.young@live.com>

1 attachments (80 KB)
Invoice_656_491294_g8e.pdf;

Hi Corina,

I hope this email finds you very well.

I just wanted to let you know that the trial in Geraci v Cotton went forward and was completed. Therefore, you don't have to worry about providing any declaration or testimony on this case. Attached is your final invoice; no payment is due from you and we will close our file.

It was a pleasure working with you. Good luck on all your future endeavors!

PS. The jury found in favor of Geraci.

Natalie T. Nguyen, Esq.
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EXHIBIT 2

Douglas A. Pettit, Esq., SBN 160371
Kayla R. Sealey, Esq., SBN 341956
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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **August 5, 2022, at 9 00 a.m.,** or as soon thereafter as the matter may be heard before the Honorable James A. Mangione in Department C-75 of the above-entitled court, Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, "Defendants") will and hereby do move this Court for an order striking the First Amended Complaint ("FAC") filed by Plaintiffs AMY SHERLOCK and ANDREW FLORES (collectively, "Plaintiffs").

This Motion is made pursuant to Code of Civil Procedure section 425.16 and on the grounds that the causes of action asserted against Defendants in the FAC arise from constitutionally protected activity and Plaintiffs cannot establish a probability of prevailing on their claims. Plaintiffs' claims are barred by Civil Code sections 47(b) and 1714.10. Further, Plaintiffs cannot establish the essential elements of their claims.

Pursuant to section 425.16(c)(1), Defendants also seek the attorneys' fees and costs incurred in connection with this Motion.

Defendants' Special Motion to Strike is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Gina M. Austin, the Declaration of Douglas A. Pettit, the Notice of Lodgment with supporting exhibits, the entire court file in this matter, and on such further evidence as will be presented at the hearing for this Motion.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: June 16, 2022

By: _____

Douglas A. Pettit, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

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FEDERAL

STATUTES

Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, "Austin" or "Defendants"), hereby submit the following Memorandum of Points and Authorities in support of their Special Motion to Strike Plaintiffs AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., and ANDREW FLORES' (collectively, "Plaintiffs") First Amended Complaint pursuant to Code of Civil Procedure section 425.16 (the "anti-SLAPP statute").

I.

INTRODUCTION

The claims in Plaintiffs' First Amended Complaint ("FAC") should be stricken pursuant to California's anti-SLAPP statute. The entire lawsuit, as it relates to Austin, is based on her acting within the scope as an attorney, providing legal services to her clients and petitioning for conditional use permits ("CUPs")—all of which is absolutely privileged pursuant to Civil Code section 47(b). Although the FAC attempts to characterize Austin's actions as conspiratorial to monopolize the cannabis market, the facts provided only show that Plaintiffs are suing Austin for doing her job and representing her clients. This is a classic case for the application of the anti-SLAPP statute.

Austin is an attorney who specializes in cannabis licensing and entitlement at the state and local levels. Despite the fact that neither Plaintiff has a direct grievance against Austin, she has been named as a defendant in this action. Plaintiff Amy Sherlock's alleged damages stem from allegations that other named defendants (not Austin) defrauded her and her children out of property that was owned by her deceased husband. Likewise, Plaintiff Andrew Flores' alleged damages stem from the acts of other named defendants, not Austin. These contrived conspiracy claims are without merit and are simply rehashed allegations that have already been made in three separate complaints. [1]

Notwithstanding its frivolous nature, Plaintiffs' FAC is subject to the anti-SLAPP statute. The claims asserted against Austin are explicitly grounded in petitioning activities undertaken by

[1] **Exhibit A**: *Geraci v. Cotton* Complaint; **Exhibit B**: *Geraci v. Cotton* Cross-Complaint; **Exhibit C**: *Cotton v. Geraci et al.* Complaint.

Austin on behalf of her clients. The causes of action for Conspiracy to Monopolize in Violation of the Cartwright Act, Unfair Competition and Unlawful Business Practices, and Civil Conspiracy fall within the anti-SLAPP statute as they arise directly from the protected activity of petitioning an administrative agency. Further, Plaintiffs cannot meet their burden to establish a probability of success on their claims because (1) the claims are barred by Civil Code section 1714.10, (2) Austin's petitioning activities are clearly and unambiguously protected by the litigation privilege, and (3) Plaintiffs failed to establish and cannot establish the essential elements of their claims.

II.

STATEMENT OF RELEVANT FACTS

A. The Cotton Actions

Plaintiffs' FAC conspicuously resembles the allegations made in the various Cotton actions by asserting the same conspiracy theory based upon the same facts. The Cotton actions arise out of an unsuccessful agreement for the purchase and sale of real property between Cotton and defendant Larry Geraci ("Geraci"). Austin represented Geraci at the time and was involved to the extent of drafting the parties' purchase and sale agreement. (Austin Dec., ¶ 6.) Neither Plaintiff was involved or had anything remotely to do with this deal.

On March 21, 2017, a complaint was filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, for breach of contract claims. (Declaration of Douglas A. Pettit ("Pettit Dec."), Ex. A.) Austin did not represent Geraci in this action, she only testified at trial pursuant to a subpoena. (Austin Dec., ¶ 7.)

On August 25, 2017, Cotton filed a cross-complaint in *Geraci v. Cotton* (Pettit Dec., Ex. B) which named Austin as a defendant for representation of Geraci in drafting the purchase and sale agreement. Following a jury trial, judgment was entered in favor of Geraci against Cotton on both the complaint and the cross-complaint.

On February 9, 2018, Cotton filed a complaint in *Cotton v. Geraci, et al.*, Case No. 18-cv-0325-GPC-MDD, asserting twenty (20) causes of action alleging the city was prejudice against him, the state court judges were biased, and all defendants were united in a grand conspiracy. (Pettit Dec., Ex. C.)

B. Austin's Involvement with the Ramona CUP

The Ramona CUP was issued at 1210 Olive Street, Ramona, California 92065, to Michael "Biker" Sherlock ("Mr. Sherlock"). (FAC, ¶¶ 2,68.) All of the allegations related to the Ramona CUP are asserted by Plaintiff Sherlock against other defendants. (See FAC, ¶¶ 64-115.) Austin was not involved with the acquisition of the Ramona CUP. (Declaration of Gina M. Austin ("Austin Dec."), ¶ 2.)

C. Austin's Involvement with the Balboa CUP

The Balboa CUP was issued at 8863 Balboa Avenue, Unit E, San Diego, California 92123, to Mr. Sherlock's holding entity, United Patients Consumer Cooperative. (FAC, ¶¶ 2, 71.) All of the allegations related to the Balboa CUP are asserted by Plaintiff Sherlock against other defendants. (See FAC, ¶¶ 64-115.) Austin was involved with the acquisition of the Balboa CUP to the extent that she helped Evelyn Heidelberg, Mr. Sherlock's attorney, with the initial application. (Austin Dec., ¶ 3.)

D. Austin's Involvement with the Federal CUP

The Federal CUP was issued at 6220 Federal Blvd., San Diego, California 92114, to defendant Aaron Magagna. (FAC, ¶¶ 2, 213.) Austin was not involved with the acquisition of the Federal CUP. (Austin Dec., ¶ 5.)

Prior to the Federal CUP being issued, Austin and others were hired by Geraci to apply for a CUP at 6176 Federal Blvd., San Diego, California 92114 (the "Cotton Property"). (FAC, ¶ 119; Austin Dec., ¶ 4.) Austin was involved in assisting with the preparation of the application, which was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP. (*Ibid*.)

E. Austin's Involvement with the Lemon Grove CUP

The Lemon Grove CUP was issued at 6859 Federal Blvd., Lemon Grove, California 91945. (FAC, ¶ 2.) Austin was not involved with the acquisition of the Lemon Grove CUP and has no recollection of conversations with anyone regarding whether the Lemon Grove Property qualified for a CUP. (Austin Dec., ¶ 8.) Further, Plaintiffs have not alleged any interest in the Lemon Grove CUP and are not asserting any related damages—the FAC is improperly asserting rights of a third-party who is not a plaintiff. (See FAC, ¶¶ 267-275.)

III.

LEGAL STANDARD

Code of Civil Procedure section 425.16 (the "anti-SLAPP statute") is a procedural remedy designed "to dispose of lawsuits brought to chill the valid exercise of a party's constitutional right of petition or free speech." (*Digerati Holdings, LLC v. Young Money Ent't, LLC* (2011) 194 Cal.App.4th 873, 882-83.) The Legislature enacted the anti-SLAPP statute to control "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances." (Code Civ. Proc., § 425.16, subd. (a).) The statute therefore "provides a procedure for weeding out, at an early stage, *meritless* claims arising from protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 384; See also *Bel Air Internet v. Morales* (2018) 20 Cal.App.5th 924, 939.) In order to maximize protection for petitioning activity, the statute is construed broadly. (Code Civ. Proc., § 425.16, subd. (a); *Briggs v. Eden Council* (1999) 19 Cal.4th 1106, 1119-22.)

The anti-SLAPP analysis involves a two-pronged test. First, the Court must determine if the moving party has made a threshold showing that the challenged claim arises out of activity which is protected under the statute. (Code Civ. Proc., § 425.16, subd. (b)(1); See also *Jarrow Formulas, Inc. v. Lamarche* (2003) 31 Cal.4th 728, 733.) The inquiry on the first prong focuses only on whether the actions underlying the challenged claims fall under one of the categories of protected activity described in section 425.16, subdivision (e). (*Malin v. Singer* (2013) 217 Cal.App.4th 1283, 1292.)

Second, if the movant establishes the challenged claims arise out of protected activity, the burden then shifts to the respondent to demonstrate by "competent, admissible evidence" a probability of success on the merits. (Code Civ. Proc., § 425.16, subd. (b)(1); See *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 736 [holding plaintiff cannot rely solely on his complaint to meet his burden under the second prong].) If the respondent fails to meet this burden, the claims must be stricken. (Code Civ. Proc., § 425.16, subd. (b) (1).)

In making its determination, the trial court is instructed to analyze the factual sufficiency of a claim, "not make credibility determinations or compare the weight of the evidence." (*Malin*

v. Singer, supra, 217 Cal.App.4th at 1293, citing *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn.3; See also *Flatley v. Mauro* (2006) 39 Cal.4th 299, 326.)

IV.

ARGUMENT

A. The First Prong of the Anti-SLAPP Statute is Satisfied Because Plaintiffs' Claims Arise from Protected Activity

1. Petitioning an Administrative Agency for Conditional Use Permits is a Protected Activity

One form of protected activity under the anti-SLAPP statute is "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law." (Code Civ. Proc., § 425.16, subd. (e)(1).) All of the claims against Austin in Plaintiffs' FAC are based on or related to proceedings she instituted before the local zoning authority. Specifically, Plaintiffs' claims are based on Austin's acquisition of CUPs on behalf of her clients.

"It is well established that the protection of the anti-SLAPP statute extends to lawyers and law firms engaged in litigation-related activity." (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 113.) "In fact, courts have adopted a fairly expansive view of what constitutes litigation-related activities within the scope of section 425.16." (*Ibid*, internal quotations omitted.) Under the statute's "plain language," the filing of such legal petitions and "*all* communicative acts performed by attorneys as part of their representation of a client in a judicial proceeding or other petitioning context are per se protected as petitioning activity by the anti-SLAPP statute." (*Ibid*, italics in original; internal quotations omitted.)

Austin's filing of applications for conditional use permits on behalf of her clients and any statements made in a proceeding before the local zoning authority fall under the anti-SLAPP statute as petitioning activity because a local zoning authority proceeding is the proceeding of a governmental administrative body. (*Briggs v. Eden Council for Hope & Opportunity,*

///

supra, 19 Cal.4th at 1115 ["[t]he constitutional right to petition . . . includes . . . seeking administrative action"].)

2. Plaintiffs' Claims "Arise From" the Petitioning for Conditional Use Permits

In determining whether a claim "arises from" protected conduct, the Court looks at the "allegedly wrongful and injury-producing conduct that provides the foundation for the claims." (*Castleman v. Sagaser* (2013) 216 Cal.App.4th 481, 490-91.) "The anti-SLAPP statute's definitional focus is not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 92.) Plaintiffs cannot avoid the anti-SLAPP application by disguising the pleading as a "garden variety" tort claim if the basis of the alleged liability is predicated on protected speech or conduct." (*Id.* At 90.)

Here, Plaintiffs' inclusion of Defendants in the FAC arises out of protected activity. Plaintiffs' FAC explicitly states: "This action focuses on the Enterprise's unlawful acts in acquiring four CUPs . . ." (FAC, ¶ 7.) Specifically, Austin's conduct of aiding her clients in the acquisition of CUPs is the basis for the claims against Defendants. Plaintiffs' causes of action for conspiracy to monopolize in violation of the Cartwright Act, unfair competition and unlawful business practices, and civil conspiracy are compromised solely of Austin's petitioning activities for CUPs on behalf of her clients. (FAC, ¶¶ 53, 119.)

Although the FAC alleges someone nonprotected activity in addition to the protected activity, the anti-SLAPP statute still applies. For example, the FAC alleges that Austin "provided confidential information from her non-Enterprise clients regarding real properties that qualified for CUPs so that Razuki and his associates could take action to prevent the acquisition of those CUPs by Austin's non-Enterprise clients in furtherance of creating a monopoly." (FAC, ¶ 62.) Plaintiffs likewise allege that "Austin contacted Williams despite knowing he was represented by counsel in violation of the Rules of Professional Responsibility." (FAC, ¶ 274.) Even if these allegations were true, the law is clear that mixed allegations of protected and nonprotected activity do not remove the claims from the scope of the anti-SLAPP statute. "Where causes of action allege both protected and unprotected activity, all the causes of action must be stricken."

(*Trapp v. Naiman* (2013) 218 Cal.App.4th 113, 121; See also *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 308 ["a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity…"].) Simply put, if the harm primarily stems from protected activity, the entire claim is subject to being stricken. (*Peregrine Funding, Inc.* (2005) 133 Cal.App.4th 658.)

Plaintiffs' claims and alleged injuries resulted entirely from actions Austin took in petitioning the local zoning authority, on behalf of her clients, for CUPs. While the FAC alleges violations of the Rules of Professional Conduct, the only harm demonstrably connected to these allegations are the petitions for and acquisitions of CUPs. Accordingly, Austin's alleged conduct of aiding her clients in the acquisition of CUPs, is central to the claims. Since the claims arise out of protected activity (and Austin was named in retaliation for protected activity), Austin has met its burden under the first prong of the anti-SLAPP analysis.

B. The Second Prong of the Anti-SLAPP Statute is Also Satisfied Because Plaintiffs' Cannot Establish a Probability of Prevailing on Their Claims

Once the defendant establishes that the anti-SLAPP statute applies, the plaintiff must demonstrate that his claims have merit based not on speculation or the mere allegations of the pleadings, but with "competent and admissible evidence." (*Tuchscher Dev. Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1236.) Evidence that would not be admissible at trial, such as an "averment on information and belief[,] … cannot show a probability of prevailing on the claim." (*Ibid*.)

While the burden on the second prong belongs the plaintiff, in determining whether a party has established a probability of prevailing on the merits of his or her claims, a court considers not only the substantive merits of those claims, but also all defenses available to them. (See *Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 398.) A plaintiff must present evidence to overcome any privilege or defense to the claim that has been raised in order to demonstrate a "probability of success on the merits." (See *Flately v. Mauro*, *supra,* 39 Cal.4th at 323.)

///

1. Civil Code Section 1714.10 Bars Plaintiffs' Claims

Under Civil Code section 1714.10 (a),

> No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action.

(Civ. Code, § 1714.10, subd. (a).) The plaintiff must file a verified petition accompanied by supporting affidavits stating the facts upon which the liability is based, after which the defendant is entitled to submit opposing affidavits prior to the court making its determination. (*Ibid*.) Failure to obtain a court order under section 1714.10 (a) is a defense to the action. (Civ. Code, § 1714.10, subd. (b).)

Section 1714.10 applies to any claims against an attorney where the factual basis for the conspiracy-based claim is so intertwined with the other causes of action that it is not severable. (*Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 820-21.) Here, Plaintiffs' causes of action against Austin include i) Conspiracy to Monopolize in Violation of the Cartwright Act (Bus. & Prof. Code, §§ 16720 *et seq*.); ii) Unfair Competition and Unlawful Business Practices (Bus. & Prof. Code, §§ 17200 *et seq*.); and iii) Civil Conspiracy. Each cause of action against Austin is based on allegations of a conspiracy with "the Enterprise" in which Plaintiffs allege Austin unlawfully applied for or acquired CUPS for her clients (FAC, ¶ 4, 7.) All of Plaintiffs' claims are based entirely on Austin's purported conspiracy with and representation of her clients. (See, e.g., FAC at ¶¶ 42, 53, 59, and 119.) Yet, Plaintiffs did not obtain leave from this Court to include Austin as a defendant before filing the FAC against her. Plaintiffs never filed a "verified petition" or "supporting affidavits stating the facts upon which the liability is based" as required. (Civ. Code, § 1714.10, subd. (a).) Thus, Plaintiffs failed to comply with section 1714.10, and their claims against Austin are barred. (Civ. Code, § 1714.10, subd. (b).)

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2. Plaintiffs' Claims are Barred by the Litigation Privilege

In addition to being barred by Civil Code section 1714.10, Plaintiffs' claims are barred by the litigation privilege. A plaintiff cannot establish a probability of prevailing if the litigation privilege precludes liability on the claims. (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP, supra*, 18 Cal.App.5th at 115; See also, *Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 926-27 [plaintiff cannot demonstrate a probability of prevailing where plaintiff's defamation action was barred by Civil Code section 47, subd. (b)].) It is well established under California law, that the litigation privilege "is absolute in nature, applying 'to all publications, irrespective of their maliciousness.'" (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241, quoting *Silberg v. Anderson* (1990) 50 Cal.3d 205, 216.) 'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.' (*Id*. at p. 212.) The privilege "is not limited to statements made during a trial or other proceedings, but may extend to steps taken prior thereto, or afterwards." (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1057.) The privilege has been interpreted broadly and "any doubt as to whether the privilege applies is resolved in favor of applying it." (*Adams v. Superior Court* (1992) 2 Cal.App.4th 521, 529; *Home Ins. Co. v. Zurich Ins. Co.* (2002) 96 Cal.App.4th 17,13.)

Here, Plaintiffs' claims are based entirely on communications protected by the litigation privilege, i.e., petitioning the local zoning authority. Local zoning authority proceedings are the type of proceedings to which the litigation privilege applies. The statements made during such proceeding are covered by the litigation privilege as statements made as part of an "official proceeding authorized by law" within the meaning of Civil Code section 47, subdivision (b) because they were made in a quasi-judicial proceeding. (See *Lebbos v. State Bar* (1985) 165 Cal.App.3d 656, 667 [statements made in initiating and pursuing a State Bar administrative proceeding were protected by the litigation privilege]; *Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 362 ["statements that are made in quasi-judicial proceedings . . . are privileged to the same extent as statements made in the course of a judicial proceeding"].)

The litigation privilege is absolute. As such, Plaintiffs' claims against Austin are barred by the litigation privilege.

3. Plaintiffs' Conspiracy to Monopolize in Violation of the Cartwright Act Claim Fails

In *Quelimane v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47, the Supreme Court described the required Cartwright Act allegations to maintain an action for combination in restraint of trade as three-fold: "(1) the formation and operation of the conspiracy, (2) the wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act or acts" (*ibid*), but subsequently indicated that an allegation or inference of purpose to restrain trade should also be present. (See *Kunert v. Mission Financial Services Corp.* (2003) 110 Cal.App.4th 242, 262, n.15; See also *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 722 [agreement violates Cartwright Act only if "restraint of trade in the commodity is the purpose of the agreement"].)

As a general proposition the California Supreme Court requires a "high degree of particularity in the pleading of Cartwright Act violations." (*G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 265.) Unlawful combinations must be alleged with specificity, and thus, "general allegations of a conspiracy unaccompanied by a statement of the facts constituting the conspiracy and explaining its objectives and impact in restraint of trade will not suffice." (*Ibid;* See *Truta v. Avis Rent A Car System, Inc.* (1987) 193 Cal.App.3d 802 [conclusory allegations insufficient].)

"[A] plaintiff cannot merely restate the elements of a Cartwright Act violation . . . the plaintiff must allege in its complaint *certain facts* in addition to the elements of the alleged unlawful act so that the defendant can understand the nature of the alleged wrong and discovery is not merely a blind 'fishing expedition' for some unknown wrongful acts." (*Smith v. State Farm Mutual Automobile Ins. Co., supra,* 93 Cal.App.4th at 722 (emphasis in original), quoting *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1236.)

A Cartwright Act violation requires "a combination of capital, skill or acts by two or more persons" that seeks to achieve an anticompetitive end. (Bus. & Prof. Code, § 16720.)

Consequently, "[o]nly separate entities pursuing separate economic interests can conspire within the proscription of the antitrust laws against price fixing combinations." (*Freeman v. San Diego Assn. of Realtors* (1999) 77 Cal.App.4th 171, 189, citing *Copperweld Corp. v. Independence Tube Corp.* (1984) 467 U.S. 752, 769–771 [legally distinct entities do not conspire if they "pursue[] the common interests of the whole rather than interests separate from those of the [group] itself…"].) A Cartwright Act complaint that does not adequately allege concerted action by separate entities with separate and independent interests is subject to dismissal. (*Id*. at 52; *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1.)

Plaintiffs' FAC has failed to even come close to supporting a claim for violation of the Cartwright Act. Plaintiffs' only make general allegations of a conspiracy and have not offered a single fact showing that the purpose of the agreement, between all 19 defendants, was a restraint of trade in CUPs. This alone, is enough for Plaintiffs' Cartwright Act claim to be stricken.

The FAC also fails to allege concerted action by separate entities with separate and independent interests. Plaintiffs' have alleged concerted action "of a small group of wealthy individuals and their agents (the "Enterprise") that have conspired to create an unlawful monopoly in the cannabis market." (FAC, ¶ 1.) Their whole argument is that everyone was working together and pursuing the common interest of the enterprise. (See *Copperworld Corp. v. Independence Tube Corp., supra,* 467 U.S. at 769-771.) This too, by itself, is enough for the Court to dismiss this claim.

By way of supporting facts, the FAC alleges: "Defendants committed overt acts and engaged in concerted action in furtherance of their combination and conspiracy to restrain and monopolize, as described above, including but not limited to unlawfully applying for or acquiring CUPs through the use of proxies and/or forged documents, sham litigation, and acts and threats of violence against competitors and/or parties who could threaten or expose their illegal actions in furtherance of the conspiracy. (FAC, ¶ 283.) Although this allegation includes all the correct buzzwords, it does nothing to help the already mentioned deficiencies. More importantly, it fails to show any liability as to Austin and further supports the fact that she has been wrongly included in this action:

- Unlawfully applying for or acquiring CUPs through the use of proxies: Paragraph 119 of the FAC alleges that Austin, Bartell and Schweitzer were hired by Geraci to prepare and submit a CUP application in the name of Geraci's assistant, Berry (the "Berry CUP Application"). Other than this conclusory allegation, Plaintiffs have provided no evidence supporting it, as to Austin. (See FAC, Exh. 3, the Berry CUP Application [showing it was signed and submitted by Schweitzer].)
- Unlawfully applying for or acquiring CUPs through forged documents: This allegation has nothing to do with Austin as it relates to Plaintiff Sherlocks claims against defendants Lake and Harcourt. (See FAC, ¶¶ 64-99 and 285-301.)
- Sham litigation: This allegation is in regards to the action filed by Geraci against Cotton (Cotton I). (See FAC, ¶ 316.) Austin's only role in it was testifying. (See FAC, ¶¶ 202, 204.)
- Acts and threats of violence: There are no allegations in the FAC of threats or violence against Austin. (See FAC, ¶¶ 215-224 [alleging defendants Alexander and Stellmacher threated Cotton]; FAC, ¶¶ 225-238 [alleging defendant Magagna threatens Young].)

Thus, Plaintiffs' conspiracy to monopolize in violation of the Cartwright Act claim should be stricken.

4. The Unfair Competition and Unlawful Business Practices Claims Fails

The Unfair Business Practices Act shall include "any unlawful, unfair, or fraudulent business act or practice." (Bus. & Prof. Code, § 17200.) A plaintiff alleging unfair business practices under these statutes must state with reasonable particularity the facts supporting the statutory elements of the violation. (*Khoury v. Maly's of California. Inc.* (1993) 14 Cal.App.4th 612, 619.)

Plaintiffs allege that Austin's "Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq." (FAC, ¶ 314.) Business and Professions Code section 26057, formerly section 19323, states the licensing authority "shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division." (Bus. & Prof. Code, § 26057.) The statute goes on

to list specific conditions that *may* constitute grounds for denial of licensure or renewal. (*Ibid*, emphasis added.)

Plaintiffs' entire argument backing their "Proxy Practice" allegation rests on their asserted fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs' do not mention is that although this type of sanction could be grounds for denial, section 26057 allows the licensing authority to decide based on all the circumstances. A plain reading of the statute shows there is no one condition that constitutes an automatic, outright denial. The statute gives the licensing authority complete discretion to weigh factors and decide what *may* constitute grounds for denial.

Further, it is unclear as to how Austin could be implicated for violation of this statute as it does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing, approving or denying such applications.

Consequently, Plaintiffs have not properly alleged a claim for unfair business practices, which requires Plaintiffs to state with reasonable particularity the facts supporting the statutory elements of the violation. (See *Khoury v. Maly's of California. Inc.*, *supra*, 14 Cal.App.4th at 619.) As it stands, Plaintiffs have not pled a statute, its elements, and any facts to support Austin's violation of said statute. Thus, Plaintiffs unfair competition and unlawful business practices claim should be stricken.

5. Plaintiffs' Civil Conspiracy Claim is Legally Defective

A complaint for civil conspiracy states a cause of action only when it alleges the commission of a civil wrong that causes damage; although conspiracy may render additional parties liable for the wrong or increase the damages for which any one conspirator is liable, the conspiracy itself, no matter how atrocious, is not actionable without the wrong. (*Okun v. Superior Court* (1981) 29 Cal.3d 442, 454.) The civil wrong must consist of acts that would give rise to a cause of action independent of the conspiracy. (*Zumbrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d 1, 12; See also *Harrell v. 20th Century Ins. Co.* (9th Cir. 1991) 934 F.2d 203, 208 [civil

conspiracy claim failed because underlying cause of action for fraud was barred by the statute of limitations].)

If a party is legally incapable of committing the underlying tort, that party cannot be liable for conspiracy to commit the tort. (*1-800-Contacts, Inc. v. Steinberg* (2003) 107 Cal.App.4th 568, 590 [party who owed no fiduciary duties to plaintiff found not liable for conspiracy to induce breach of fiduciary duties owed by another]; See also *Chavers v. Gatke Corp.* (2003) Cal.App.4th 606, 614 [defendant not liable for conspiracy unless he owes plaintiff a duty that is independent of conspiracy].) In addition, if the underlying tortious act was privileged, an allegation that the act was committed as a part of a conspiracy will not revive an action that would otherwise be barred. (*Nicholson v. McClatchy Newspaper* (1986) 177 Cal.App.3d 509, 521.)

First and foremost, Plaintiffs have not alleged facts sufficient to prove a conspiracy. There are no facts proving that Austin created or was a participant in any common plan, scheme or design. There are no facts proving that Austin agreed to be a part of a conspiracy or that her acts were in furtherance of a conspiracy.

Additionally, even if Plaintiffs did properly plead a conspiracy (they did not), this claim still fails. Plaintiffs cannot prevail on any of the underlying tort claims upon which the conspiracy claim is based. Because a bare conspiracy is not actionable, Plaintiffs could only prevail on this claim if they showed that they had a probability of prevailing on one or more of the torts upon which the conspiracy claim is predicated. Their failure to show a probability of success on any of the underlying tort claims therefore bars Plaintiffs' conspiracy claims as a matter of law.

Furthermore, as explained above, the litigation privilege applies. In other words, the acts complained of by Plaintiffs were privileged. Therefore, Plaintiffs cannot try to revive an action against Austin by alleging her acts were committed as part of a conspiracy. Thus, Plaintiffs civil conspiracy claim fails.

V.

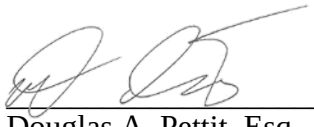
CONCLUSION

Plaintiffs' claims against Austin arise from her petitioning the local zoning authority, on behalf of her clients. Because the claims all arise from protected petitioning activity, Defendants

establish the first prong of the anti-SLAPP analysis. On the second prong of the analysis, Plaintiffs cannot meet their burden to show a likelihood of success on the merits. In addition, Plaintiffs' claims are barred by Civil Code 1714.10 and the litigation privilege. Accordingly, Austin respectfully requests the Court grant her special motion to strike Plaintiffs' FAC as to Defendants Gina M. Austin and Austin Legal Group pursuant to Code of Civil Procedure section 425.16.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: June 16, 2022

By: 

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

DECLARATION OF GINA M. AUSTIN, ESQ. IN SUPPORT OF MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

I, Gina Austin, declare as follows:

1. I am a named defendant in the above-captioned case and am a partner and owner of the law firm Austin Legal Group ("ALG"), also a named defendant in this action. I am licensed to practice before the Courts of the State of California, and if called as a witness, I would and could competently testify to the following facts of my own personal knowledge.

2. ALG was not involved with the acquisition of the Ramona CUP.

3. ALG was involved with the acquisition of the Balboa CUP, to the extent of helping Evelyn Heidelberg, Michael Sherlock's attorney, with the initial application.

4. ALG was hired by Larry Geraci ("Geraci") to help acquire a CUP at 6176 Federal Blvd., San Diego, California 92114 (the "Cotton Property"). I assisted with the application, but it was abandoned after another CUP was issued within 1000 feet, i.e., the Federal CUP.

5. ALG was not involved with the acquisition of the Federal CUP.

6. ALG represented Geraci in drafting a finalized draft of Darryl Cotton ("Cotton") and Geraci's agreement for the purchase and sale of the Cotton Property.

7. ALG did not represent Geraci in *Cotton I*. I only testified at trial pursuant to a subpoena.

8. ALG was not involved with the acquisition of the Lemon Grove CUP, and I have no recollection of conversations with anyone regarding whether the property qualified for a CUP.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of June, 2022, at San Diego, California.

Gina Austin, Esq.

Douglas A. Pettit, Esq., SBN 160371
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GINA M. AUSTIN and
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

DECLARATION OF DOUGLAS A. PETTIT, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

I, Douglas A. Pettit, declare as follows:

1. I am an attorney duly licensed to practice law before all of the courts of the State of California and am a shareholder with the law firm of Pettit Kohn Ingrassia Lutz & Dolin PC, attorneys of record for Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP ("Defendants"), in the above-captioned case. I am familiar with the facts and proceedings of this case and if called as a witness, I could and would competently testify to the following facts of my own personal knowledge.

2. A true and correct copy of the Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed March 21, 2017, in San Diego Superior Court is attached hereto as **Exhibit A**.

3. A true and correct copy of the Cross-Complaint filed in *Geraci v. Cotton*, Case No.: 37-2017-00010073-CU-BC-CTL, filed August 25, 2017, in San Diego Superior Court is attached hereto as **Exhibit B.**

4. A true and correct copy of the Complaint filed in *Cotton v. Geraci, et al.*, Case No. 18-cv-0325-GPC-MDD, filed February 9, 2018, in the United States District Court, Southern District of California is attached hereto as **Exhibit C**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 16th day of June, 2022, at San Diego, California.

Douglas A. Pettit, Esq.

Exhibit A

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Attorneys for Plaintiff
LARRY GERACI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual, Plaintiff, v. DARRYL COTTON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No. 37-2017-00010073-CU-BC-CTL **PLAINTIFF'S COMPLAINT FOR:** **1. BREACH OF CONTRACT;** **2. BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING;** **3. SPECIFIC PERFORMANCE; and** **4. DECLARATORY RELIEF.**

Plaintiff, LARRY GERACI, alleges as follows:

1. Plaintiff, LARRY GERACI ("GERACI"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

2. Defendant, DARRYL COTTON ("COTTON"), is, and at all times mentioned was, an individual residing within the County of San Diego, State of California.

3. The real estate purchase and sale agreement entered into between Plaintiff GERACI and Defendant COTTON that is the subject of this action was entered into in San Diego County, California, and concerns real property located at 6176 Federal Blvd., City of San Diego, San Diego County, California (the "PROPERTY").

4. Currently, and at all times since approximately 1998, Defendant COTTON owned the PROPERTY.

5. Plaintiff GERACI does not know the true names or capacities of the defendants sued herein as DOES 1 through 20 and therefore sue such defendants by their fictitious names. Plaintiff is

informed and believe and based thereon allege that each of the fictitiously-named defendants is in some way and manner responsible for the wrongful acts and occurrences herein alleged, and that damages as herein alleged were proximately caused by their conduct. Plaintiff will seek leave of Court to amend this complaint to state the true names and/or capacities of such fictitiously-named defendants when the same are ascertained.

6. Plaintiff alleges on information and belief that at all times mentioned herein, each and every defendant was the agent, employee, joint venture, partner, principal, predecessor, or successor in interest and/or the alter ego of each of the remaining defendants, and in doing the acts herein alleged, were acting, whether individually or through their duly authorized agents and/or representatives, within the scope and course of said agencies, service, employment, joint ventures, partnerships, corporate structures and/or associations, whether actual or ostensible, with the express and/or implied knowledge, permission, and consent of the remaining defendants, and each of them, and that said defendants ratified and approved the acts of all of the other defendants.

GENERAL ALLEGATIONS

7. On November 2, 2016, Plaintiff GERACI and Defendant COTTON entered into a written agreement for the purchase and sale of the PROPERTY on the terms and conditions stated therein. A true and correct copy of said written agreement is attached hereto as Exhibit A.

8. On or about November 2, 2016, GERACI paid to COTTON $10,000.00 good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until the license, known as a Conditional Use Permit or CUP is approved, all in accordance with the terms and conditions of the written agreement.

9. Based upon and in reliance on the written agreement, Plaintiff GERACI has engaged and continues to engage in efforts to obtain a CUP for a medical marijuana dispensary at the PROPERTY, as contemplated by the parties and their written agreement. The CUP process is a long, time-consuming process, which can take many months if not years to navigate. Plaintiff GERACI's efforts include, but have not been limited to, hiring a consultant to coordinate the CUP efforts as well as hiring an architect. Plaintiff GERACI estimates he has incurred expenses to date of more than $300,000.00 on the CUP process, all in reliance on the written agreement for the purchase and sale of

the PROPERTY to him by Defendant COTTON.

FIRST CAUSE OF ACTION

(For Breach of Contract against Defendant COTTON and DOES 1-5)

10. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 9 above.

11. Defendant COTTON has anticipatorily breached the contract by stating that he will not perform the written agreement according to its terms. Among other things, COTTON has stated that, contrary to the written terms, the parties agreed to a down payment or earnest money in the amount of $50,000.00 and that he will not perform unless GERACI makes a further down payment. COTTON has also stated that, contrary to the written terms, he is entitled to a 10% ownership interest in the PROPERTY and that he will not perform unless GERACI transfers to him a 10% ownership interest. COTTON has also threatened to contact the City of San Diego to sabotage the CUP process by withdrawing his acknowledgment that GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions and, on March 21, 2017, COTTON made good on his threat when he contacted the City of San Diego and attempted to withdraw the CUP application.

12. As result of Defendant COTTON's anticipatory breach, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

SECOND CAUSE OF ACTION

(For Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant COTTON and DOES 1-5)

13. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 12 above.

14. Each contract has implied in it a covenant of good faith and fair dealing that neither party will undertake actions that, even if not a material breach, will deprive the other of the benefits of the agreement. By having threatened to contact the City of San Diego to sabotage the CUP process by

withdrawing his acknowledgment that Plaintiff GERACI has a right to possession or control of the PROPERTY if GERACI will not accede to his additional terms and conditions, Defendant COTTON has breached the implied covenant of good faith and fair dealing.

15. As result of Defendant COTTON's breach of the implied covenant of good faith and fair dealing, Plaintiff GERACI will suffer damages in an amount according to proof or, alternatively, for return of all sums expended by GERACI in reliance on the agreement, including but not limited to the estimated $300,000.00 or more expended to date on the CUP process for the PROPERTY.

THIRD CAUSE OF ACTION

(For Specific Performance against Defendants COTTON and DOES 1-5)

16. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 15 above.

17. The aforementioned written agreement for the sale of the PROPERTY is a valid and binding contract between Plaintiff GERACI and Defendant COTTON.

18. The aforementioned written agreement for the sale of the PROPERTY states the terms and conditions of the agreement with sufficient fullness and clarity so that the agreement is susceptible to specific performance.

19. The aforementioned written agreement for the purchase and sale of the PROPERTY is a writing that satisfies the statute of frauds.

20. The aforementioned written agreement for the purchase and sale of the PROPERTY is fair and equitable and is supported by adequate consideration.

21. Plaintiff GERACI has duly performed all of his obligations for which performance has been required to date under the agreement. GERACI is ready and willing to perform his remaining obligations under the agreement, namely: a) to continue with his good faith efforts to obtain a CUP for a medical marijuana dispensary; and b) if he obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to pay the remaining $790,000.00 balance of the purchase price.

22. Defendant COTTON is able to specifically perform his obligations under the contract, namely: a) to not enter into any other contracts to sell or otherwise encumber the PROPERTY; and b) if

Plaintiff GERACI obtains CUP approval for a medical marijuana dispensary thus satisfying that condition precedent, then to deliver title to the PROPERTY to GERACI or his assignee in exchange for receipt of payment from GERACI or assignee of the remaining $790,000.00 balance of the purchase price.

23. Plaintiff GERACI has demanded that Defendant COTTON refrain from taking actions that interfere with GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and to specifically perform the contract upon satisfaction of the condition that such approval is in fact obtained.

24. Defendant COTTON has indicated that he has or will interfere with Plaintiff GERACI's attempt to obtain approval of a CUP for a medical marijuana dispensary and that COTTON does not intend to satisfy his obligations under the written agreement to deliver title to the PROPERTY upon satisfaction of the condition that GERACI obtain approval of a CUP for a medical marijuana dispensary and tender the remaining balance of the purchase price.

25. The aforementioned written agreement for the purchase and sale of the PROPERTY constitutes a contract for the sale of real property and, thus, Plaintiff GERACI's lack of a plain, speedy, and adequate legal remedy is presumed.

26. Based on the foregoing, Plaintiff GERACI is entitled to an order and judgment thereon specifically enforcing the written agreement for the purchase and sale of the PROPERTY from Defendant COTTON to GERACI or his assignee in accordance with its terms and conditions.

FOURTH CAUSE OF ACTION

(For Declaratory Relief against Defendants COTTON and DOES 1-5)

27. Plaintiffs re-allege and incorporate herein by reference the allegations contained in paragraphs 1 through 14 above.

28. An actual controversy has arisen and now exists between Defendant COTTON, on the one hand, and Plaintiff GERACI, on the other hand, in that COTTON contends that the written agreement contains terms and condition that conflict with or are in addition to the terms stated in the written agreement. GERACI disputes those conflicting or additional contract terms.

29. Plaintiff GERACI desires a judicial determination of the terms and conditions of the written agreement as well as of the rights, duties, and obligations of Plaintiff GERACI and defendants thereunder in connection with the purchase and sale of the PROPERTY by COTTON to GERACI or his assignee. Such a declaration is necessary and appropriate at this time so that each party may ascertain their rights, duties, and obligations thereunder.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

On the First and Second Causes of Action:

1. For compensatory damages in an amount in excess of $300,000.00 according to proof at trial.

On the Third Cause of Action:

2. For specific performance of the written agreement for the purchase and sale of the PROPERTY according to its terms and conditions; and

3. If specific performance cannot be granted, then damages in an amount in excess of $300,000.00 according to proof at trial.

On the Fourth Cause of Action:

4. For declaratory relief in the form of a judicial determination of the terms and conditions of the written agreement and the duties, rights and obligations of each party under the written agreement.

On all Causes of Action:

5. For temporary and permanent injunctive relief as follows: that Defendants, and each of them, and each of their respective directors, officers, representatives, agents, employees, attorneys, and all persons acting in concert with or participating with them, directly or indirectly, be enjoined and restrained from taking any action that interferes with Plaintiff GERACI' efforts to obtain approval of a Conditional Use Permit (CUP) for a medical marijuana dispensary at the PROPERTY;

6. For costs of suit incurred herein; and

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///

///

7. For such other and further relief as the Court may deem just and proper.

Dated: March 21, 2017

FERRIS & BRITTON,
A Professional Corporation

By: Michael R. Weinstein
Michael R. Weinstein
Scott H. Toothacre

Attorneys for Plaintiff
LARRY GERACI

Exhibit B

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Attorneys for Defendant and Cross-Complainant Darryl Cotton

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO: 37-2017-00010073-CU-BC-CTL

SECOND AMENDED CROSS-COMPLAINT FOR:

(1) BREACH OF CONTRACT;
(2) INTENTIONAL MISREPRESENTATION;
(3) NEGLIGENT MISREPRESENTATION;
(4) FALSE PROMISE; AND
(5) DECLARATORY RELIEF.

[IMAGED FILE]

Assigned to:
Hon. Joel R. Wohlfeil, Dept. C-73

Complaint Filed: March 21, 2017
Trial Date: Not Set

DARRYL COTTON, an individual,

Cross-Complainant

v.

LARRY GERACI, an individual; REBECCA BERRY, an individual; and ROES 1 through 50,

Cross-Defendants.

/ / / / /

Defendant and cross-complainant Darryl Cotton ("Cotton") alleges as follows:

1. Venue is proper in this Court because the events described below took place in this judicial district and the real property at issue is located in this judicial district.

2. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

3. Cotton was at all times material to this action the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property") which is the subject of this dispute.

4. Cotton is informed and believes plaintiff and cross-defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

5. Cotton is informed and believes cross-defendant Rebecca Berry ("Berry") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

6. Cotton does not know the true names and capacities of the cross-defendants named as ROES 1 through 50 and therefore sues them by fictitious names. Cotton is informed and believes that ROES 1 through 50 are in some way responsible for the events described in this Second Amended Cross-Complaint. Cotton will seek leave to amend this Second Amended Cross-Complaint when the true names and capacities of these cross-defendants have been ascertained.

7. At all times mentioned, each cross-defendant was an agent, principal, representative, employee, or partner of the other cross-defendants, and acted within the course and scope of such agency, representation, employment, and/or partnership, and with permission of the other cross-defendants.

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GENERAL ALLEGATIONS

8. In or around August 2016, Geraci first contacted Cotton seeking to purchase the Property. Geraci desired to buy the Property from Cotton because it meets certain requirements of the City of San Diego ("City") for obtaining a Conditional Use Permit ("CUP") to operate a Medical Marijuana Consumer Cooperative ("MMCC") at the Property. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

9. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property. During these negotiations, Geraci represented to Cotton, among other things, that:

(a) Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an enrolled agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

(b) Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci lobbied with the City to have the zoning issue resolved first;

(c) Geraci, through his personal and professional relationships, was in a unique position to lobby and influence key City political figures to have the zoning issue favorably resolved and obtain approval of the CUP application once submitted; and

(d) Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area.

10. Cotton, acting in good faith based upon Geraci's representations during the sale negotiations, assisted Geraci with preliminary due diligence in investigating the feasibility of a CUP application at the Property while the parties negotiated the terms of a possible deal. However, despite the parties' work on a CUP application, Geraci represented to Cotton that a CUP application for the Property could not actually be submitted until after the critical zoning issue was resolved or the application would be summarily rejected by the City.

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11. On or around October 31, 2016, Geraci asked Cotton to execute an Ownership Disclosure Statement, which is a required component of all CUP applications. Geraci told Cotton that he needed the signed document to show that Geraci had access to the Property in connection with his lobbying efforts to resolve the zoning issue and his eventual preparation of a CUP application. Geraci also requested that Cotton sign the Ownership Disclosure Statement as an indication of good-faith while the parties negotiated on the sale terms. At no time did Geraci indicate to Cotton that a CUP application would be filed prior to the parties entering into a final written agreement for the sale of the Property. In fact, Geraci repeatedly maintained to Cotton that the critical zoning issue needed to be resolved before a CUP application could even be submitted.

12. The Ownership Disclosure Statement that Geraci provided to Cotton to sign in October 2016 incorrectly indicated that Cotton had leased the Property to Berry. However, Cotton has never met Berry personally and never entered into a lease or any other type of agreement with her. At the time, Geraci told Cotton that Berry was a trusted employee who was very familiar with MMCC operations and who was involved with his other MMCC dispensaries. Cotton's understanding was that Geraci was unable to list himself on the application because of Geraci's other legal issues but that Berry was Geraci's agent and was working in concert with him and at his direction. Based upon Geraci's assurances that listing Berry as a tenant on the Ownership Disclosure Statement was necessary and proper, Cotton executed the Ownership Disclosure Statement that Geraci provided to him.

13. On November 2, 2016, Geraci and Cotton met at Geraci's office in an effort to negotiate the final terms of their deal for the sale of the Property. The parties reached an agreement on the material terms for the sale of the Property. The parties further agreed to cooperate in good faith to promptly reduce the complete agreement, including all of the agreed-upon terms, to writing.

14. The material terms of the agreement reached by the parties at the November 2, 2016 meeting included, without limitation, the following key deal points:

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(a) Geraci agreed to pay the total sum of $800,000 in consideration for the purchase of the Property, with a $50,000 non-refundable deposit payable to Cotton immediately upon the parties' execution of final integrated written agreements and the remaining $750,000 payable to Cotton upon the City's approval of a CUP application for the Property;

(b) The parties agreed that the City's approval of a CUP application to operate a MMCC at the Property would be a condition precedent to closing of the sale (in other words, the sale of the Property would be completed and title transferred to Geraci only upon the City's approval of the CUP application and Geraci's payment of the $750,000 balance of the purchase price to Cotton; if the City denied the CUP application, the parties agreed the sale of the Property would be automatically terminated and Cotton would be entitled to retain the entire $50,000 non-refundable deposit);

(c) Geraci agreed to grant Cotton a ten percent (10%) equity stake in the MMCC that would operate at the Property following the City's approval of the CUP application; and

(d) Geraci agreed that, after the MMCC commenced operations at the Property, Geraci would pay Cotton ten percent (10%) of the MMCC's monthly profits and Geraci would guarantee that such payments would amount to at least $10,000 per month.

15. At Geraci's request, the sale was to be documented in two final written agreements, a real estate purchase agreement and a separate side agreement, which together would contain all the agreed-upon terms from the November 2, 2016 meeting. At that meeting, Geraci also offered to have his attorney "quickly" draft the final integrated agreements and Cotton agreed.

16. Although the parties came to a final agreement on the purchase price and deposit amounts at their November 2, 2016 meeting, Geraci requested additional time to come up with the $50,000 non-refundable deposit. Geraci claimed he needed extra time because he had limited cashflow and would require the cash he did have to fund the lobbying efforts needed to resolve the zoning issue at the Property and to prepare the CUP application.

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17. Cotton was hesitant to grant Geraci more time to pay the non-refundable deposit but Geraci offered to pay $10,000 towards the $50,000 total deposit immediately as a show of "good-faith," even though the parties had not reduced their final agreement to writing. Cotton was understandably concerned that Geraci would file the CUP application before paying the balance of the non-refundable deposit and Cotton would never receive the remainder of the non-refundable deposit if the City denied the CUP application before Geraci paid the remaining $40,000 (thereby avoiding the parties' agreement that the $50,000 non-refundable deposit was intended to shift to Geraci some of the risk of the CUP application being denied). Despite his reservations, Cotton agreed to Geraci's request and accepted the lesser $10,000 initial deposit amount based upon Geraci's express promise to pay the $40,000 balance of the non-refundable deposit prior to submission of the CUP application, at the latest.

18. At the November 2, 2016 meeting, the parties executed a three-sentence document related to their agreement on the purchase price for the Property at Geraci's request, which read as follows:

> Darryl Cotton has agreed to sell the property located at 6176 Federal Blvd, CA for a sum of $800,000.00 to Larry Geraci or assignee on the approval of a Marijuana Dispensary. (CUP for a dispensary)
>
> Ten Thousand dollars (cash) has been given in good faith earnest money to be applied to the sales price of $800,000.00 and to remain in effect until license is approved. Darryl Cotton has agreed not to enter into any other contacts on this property.

Geraci assured Cotton that the document was intended to merely create a record of Cotton's receipt of the $10,000 "good-faith" deposit and provide evidence of the parties' agreement on the purchase price and good-faith agreement to enter into final integrated agreement documents related to the sale of the Property. Geraci emailed Cotton a scanned copy of the executed document the same day. Following closer review of the executed document, Cotton wrote in an email to Geraci several hours later (still on the same day):

> I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply.

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Approximately two hours later, Geraci replied via email, "No no problem at all."

19. Thereafter, Cotton continued to operate in good faith under the assumption that Geraci's attorney would promptly draft the fully integrated agreement documents as the parties had agreed and the parties would shortly execute the written agreements to document their agreed-upon deal. However, over the following months, Geraci proved generally unresponsive and continuously failed to make substantive progress on his promises, including his promises to promptly deliver the draft final agreement documents, pay the balance of the non-refundable deposit, and keep Cotton apprised of the status of the zoning issue.

20. Over the weeks and months that followed, Cotton repeatedly reached out to Geraci regarding the status of the zoning issue, the payment of the remaining balance of the non-refundable deposit, and the status of the draft documents. For example, on January 6, 2017, after Cotton became exasperated with Geraci's failure to provide any substantive updates, he texted Geraci, "Can you call me. If for any reason you're not moving forward I need to know." Geraci replied via text, stating: "I'm at the doctor now everything is going fine the meeting went great yesterday supposed to sign off on the zoning on the 24th of this month I'll try to call you later today still very sick."

21. Between January 18, 2017 and February 7, 2017, the following exchange took place between Geraci and Cotton via text message:

> Geraci: "The sign off date they said it's going to be the 30th."
> Cotton: "This resolves the zoning issue?"
> Geraci: "Yes"
> Cotton: "Excellent"…
>
> Cotton: "How goes it?"
> Geraci: "We're waiting for confirmation today at about 4 o'clock"
>
> Cotton: "Whats new?"
>
> Cotton: "Based on your last text I thought you'd have some information on the zoning by now. Your lack of response suggests no resolution as of yet."
> Geraci: "I'm just walking in with clients they resolved it its fine we're just waiting for final paperwork."

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The above communications between Geraci and Cotton regarding the zoning issue conveyed to Cotton that the issue had still not yet been fully resolved at that time. As noted, Geraci had previously represented to Cotton that the CUP application could not be submitted until the zoning issue was resolved, which was key because Geraci's submission of the CUP application was the outside date the parties had agreed upon for payment of the $40,000 balance of the non-refundable deposit to Cotton. As it turns out, Geraci's representations were untrue and he knew they were untrue as he had already submitted the CUP application months prior.

22. With respect to the promised final agreement documents, Geraci continuously failed to timely deliver the documents as agreed. On February 15, 2017, more than two months after the parties reached their agreement, Geraci texted Cotton, "We are preparing the documents with the attorney and hopefully will have them by the end of this week." On February 22, 2017, Geraci again texted Cotton, "Contract should be ready in a couple days."

23. On February 27, 2017, nearly three months after the parties reached an agreement on the terms of the sale, Geraci finally emailed Cotton a draft real estate purchase agreement and stated: "Attached is the draft purchase of the property for 400k. The additional contract for the 400k should be in today and I will forward it to you as well." However, upon review, the draft purchase agreement was missing many of the key deal points agreed upon by the parties at their November 2, 2016 meeting. After Cotton called Geraci for an explanation, Geraci claimed it was simply due to miscommunication with his attorney and promised to have her revise the agreement to accurately reflect their deal points.

24. On March 2, 2017, Geraci first emailed Cotton a draft of the separate side agreement that was to incorporate other terms of the parties' deal. Cotton immediately reviewed the draft side agreement and emailed Geraci the next day stating: "I see that no reference is made to the 10% equity position… [and] para 3.11 looks to avoid our agreement completely." Paragraph 3.11 of the draft side agreement stated that the parties had no joint venture or partnership agreement of any kind, which contradicted the parties' express agreement that Cotton would receive a ten percent equity stake in the MMCC business as a condition of the sale of the Property.

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25. On or about March 3, 2017, Cotton told Geraci he was considering retaining an attorney to revise the incomplete and incorrect draft documents provided by Geraci. Geraci dissuaded Cotton from doing so by assuring Cotton the errors were simply due to a misunderstanding with his attorney and that Cotton could speak with her directly regarding any comments on the drafts.

26. On March 7, 2017, Geraci emailed Cotton a revised draft of the side agreement along with a cover email that stated: "… the 10k a month might be difficult to hit until the sixth month... can we do 5k, and on the seventh month start 10k?". Cotton, increasingly frustrated with Geraci's failure to abide by the parties' agreement, responded to Geraci on March 16, 2017 in an email which included the following:

> We started these negotiations 4 months ago and the drafts and our communications have not reflected what agreed upon and are still far from reflecting our original agreement. Here is my proposal, please have your attorney Gina revise the Purchase Agreement and the Side Agreement to incorporate all the terms we have agreed upon so that we can execute final versions and get this closed... Please confirm by Monday 12:00 PM whether we are on the same page and you plan to continue with our agreement … If, hopefully, we can work through this, please confirm that revised final drafts that incorporate the terms will be provided by Wednesday at 12:00 PM. I promise to review and provide comments that same day so we can execute the same or next day.

27. On the same day, Cotton contacted the City's Development Project Manager responsible for CUP applications. **At that time, Cotton discovered for the first time that Geraci had submitted a CUP application for the Property way back on October 31, 2016, before the parties even agreed upon the final terms of their deal and contrary to Geraci's express representations over the previous five months**. Cotton expressed his disappointment and frustration in the same March 16, 2017 email to Geraci:

> I found out today that a CUP application for my property was submitted in October, which I am assuming is from someone connected to you. Although, I note that you told me that the $40,000 deposit balance would be paid once the CUP was submitted and that you were waiting on certain zoning issues to be resolved. Which is not the case.

28. On March 17, 2017, after Geraci requested an in-person meeting via text message, Cotton replied in an email to Geraci which including the following:

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> I would prefer that until we have final agreements that we converse exclusively via email. My greatest concern is that you get a denial on the CUP application and not provide the remaining $40,000 non-refundable deposit. To be frank, I feel that you are not dealing with me in good faith, you told me repeatedly that you could not submit a CUP application until certain zoning issues had been resolved and that you had spent hundreds of thousands of dollars on getting them resolved. You lied to me, I found out yesterday from the City of San Diego that you submitted a CUP application on October 31 2016 BEFORE we even signed our agreement on the 2nd of November… Please confirm by 12:00 PM Monday that you are honoring our agreement and will have final drafts (reflecting completely the below) by Wednesday at 12:00 PM.

Geraci did not provide the requested confirmation that he would honor their agreement or proffer the requested agreements prior to Cotton's deadlines.

29. On March 21, 2017, Cotton emailed Geraci to confirm their agreement was terminated and that Geraci no longer had any interest in the Property. Cotton also notified Geraci that he intended to move forward with a new buyer for the Property.

30. On March 22, 2017, Geraci's attorney, Michael Weinstein ("Weinstein"), emailed Cotton a copy of a complaint filed by Geraci in which Geraci claims for the very first time that the three-sentence document signed by the parties on November 2, 2016 constituted the parties' complete agreement regarding the Property, contrary to the parties' further agreement the same day, the entire course of dealings between the parties, and Geraci's own statements and actions.

31. On March 28, 2017, Weinstein emailed Cotton and indicated that Geraci intended to continue to pursue the CUP application and would be posting notices on Cotton's property. Cotton responded via email the same day and objected to Geraci or his agents entering the Property and reiterated the fact that Geraci has no rights to the Property.

32. The defendants' refusal to acknowledge they have no interest in the Property and to step aside from the CUP application has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property.

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FIRST CAUSE OF ACTION

(Breach of Contract – Against Geraci and ROES 1 through 50)

33. Cotton realleges and incorporates by reference paragraphs 1 through 32, above, as though set forth in full at this point.

34. Geraci and Cotton entered into an agreement to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting the terms for a purchase and sale of the Property and a side agreement for Cotton to obtain an equity position in the MMCC to operate at the Property. This agreement is comprised of (a) the November 2, 2016 document signed by Geraci and Cotton, and (b) the November 2, 2016 email exchange between Geraci and Cotton including other agreed-upon terms and the parties' agreement to negotiate and collaborate in good faith on final deal documents. True and correct copies of the agreement are attached hereto as Exhibits 1 and 2, respectively.

35. Cotton performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions of the contract between the parties or has been excused from performance.

36. Under the parties' contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable final purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

37. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable and to be determined according to proof at trial.

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SECOND CAUSE OF ACTION

(Intentional Misrepresentation – Against Geraci and ROES 1 through 50)

38. Cotton realleges and incorporates by reference paragraphs 1 through 37, above, as though set forth in full at this point.

39. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants knew to be false or were made recklessly and without regard for their truth; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

40. The intentional misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the $40,000 remainder of the $50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

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(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

41. Defendants, through their intentional misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to protect his interest in his Property. As a further result of the intentional misrepresentations, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

42. The misrepresentations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

THIRD CAUSE OF ACTION

(Negligent Misrepresentation – Against Geraci and ROES 1 through 50)

43. Cotton realleges and incorporates by reference paragraphs 1 through 42, above, as though set forth in full at this point.

44. Defendants made statements to Cotton that: (a) were false representations of material facts; (b) defendants had no reasonable grounds for believing were true when the statements were made; (c) defendants intended Cotton to rely upon; (d) Cotton reasonably and justifiably relied upon; (e) Cotton's reasonable reliance upon was a substantial factor in causing harm and damage to Cotton; and (f) caused damages to Cotton as a direct and

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proximate result of such fraudulent statements as described in paragraphs 1 through 32 above.

45. The negligent misrepresentations by defendants include at least the following:

(a) On or about October 31, 2016, Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement by (i) falsely representing that Geraci needed to show he had access to the Property in connection with his lobbying efforts to resolve the zoning issue and in connection with the preparation of a CUP application; and (ii) by indicating the document would only be used as a show of good-faith while the parties negotiated on the sale terms;

(b) On or about November 2, 2016, Geraci fraudulently induced Cotton to execute the document Geraci now alleges is the fully integrated agreement between the parties by representing that (i) the CUP application would not be filed until the zoning issue was resolved; (ii) Geraci would honor the terms of the complete agreement reached by the parties at their November 2, 2016 meeting; (iii) Geraci would pay the $40,000 remainder of the $50,000 non-refundable deposit to Cotton on or before filing a CUP application; and (iv) Geraci understood and agreed the document was not intended to be the final agreement between the parties for the purchase of the Property and did not contain all material terms of the parties' agreement;

(c) On multiple occasions, Geraci represented to Cotton that a CUP application for the Property could not be submitted until after the zoning issue was resolved;

(d) On multiple occasions, Geraci represented to Cotton that Geraci had not yet filed a CUP application with respect to the Property when the CUP application had already been filed; and

(e) On multiple occasions, Geraci represented to Cotton that the preliminary work of preparing a CUP application was merely underway, when, in fact, the CUP application had already been filed.

46. Defendants, through their negligent misrepresentations and the actions taken in reliance upon such misrepresentations, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and

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attorneys' fees to protect his interest in his Property. As a further result of the negligent misrepresentations, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

FOURTH CAUSE OF ACTION

(False Promise – Against Geraci and ROES 1 through 50)

47. Cotton realleges and incorporates by reference paragraphs 1 through 46, above, as though set forth in full at this point.

48. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises:

(a) Geraci would pay Cotton the remaining $40,000 of the non-refundable deposit prior to filing a CUP application;

(b) Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

(c) Geraci would pay Cotton the greater of $10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

(d) Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

49. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

50. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

51. Cotton reasonably relied on Geraci's promises.

52. Geraci failed to perform the promises he made on November 2, 2016.

53. Defendants, through their false promises and the actions taken in reliance upon such false promises, have diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur costs and attorneys' fees to

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protect his interest in his Property. As a further result of the false promises, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

54. The false promises were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

FIFTH CAUSE OF ACTION

(Declaratory Relief – Against Geraci, Berry, and ROES 1 through 50)

55. Cotton realleges and incorporates by reference paragraphs 1 through 54, above, as though set forth in full at this point.

56. An actual controversy has arisen and now exists between Cotton and all defendants concerning their respective rights, liabilities, obligations and duties with respect to the Property and the CUP application for the Property filed on or around October 31, 2016.

57. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than as prayed for exists by which the rights of the parties may be ascertained.

58. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) defendants have no right or interest whatsoever in the Property, (b) Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, (c) defendants have no interest in the CUP application for the Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief as follows:

ON THE FIRST CAUSE OF ACTION:

1. For general, special, and consequential damages in an amount not yet fully ascertained and according to proof at trial, but at least $40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE SECOND CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

ON THE THIRD CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000; and

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial.

ON THE FOURTH CAUSE OF ACTION

1. For general, special, and consequential damages in an amount not yet fully ascertained but at least $40,000;

2. For compensatory and reliance damages in an amount not yet fully ascertained and according to proof at trial; and

3. For punitive and exemplary damages in an amount just and reasonable to punish and deter defendants.

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ON THE FIFTH CAUSE OF ACTION

1. For a judicial declaration that defendants have no right or interest whatsoever in the Property;

2. For a judicial declaration that Cotton is the sole interest-holder in the CUP application for the Property submitted on or around October 31, 2016, defendants have no right or interest in said CUP application, and that defendants are enjoined from further pursuing such CUP application for the Property; and

3. For a judicial order that the Lis Pendens filed by Geraci on the Property be released.

ON ALL CAUSES OF ACTION

1. For interest on all sums at the maximum legal rates from dates according to proof;

2. For costs of suit; and

3. For such other relief as the Court deems just.

DATED: August 25, 2017

Respectfully submitted,

FINCH, THORNTON & BAIRD, LLP

By: _____
DAVID S. DEMIAN
ADAM C. WITT
Attorneys for Defendant and Cross-Complainant Darryl Cotton

2403.004/3BQ6279.hkr

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Exhibit C

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual,

Plaintiff,

vs.

LARRY GERACI, an individual; REBECCA BERRY, an individual; GINA AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation; MICHAEL WEINSTEIN, an individual; SCOTT H. TOOTHACRE; an individual; FERRIS & BRITTON, a professional corporation; CITY OF SAN DIEGO, a public entity; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: '18CV0325 GPC MDD

Judge:
Dept.:

PLAINTIFF'S COMPLAINT FOR:

1. 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE
2. 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS
3. BREACH OF CONTRACT;
4. FALSE PROMISE;
5. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;
6. BREACH OF FIDUCIARY DUTY;
7. FRAUD IN THE INDUCEMENT;
8. FRAUD / FRAUDULENT MISREPRESENTATION;
9. TRESPASS;
10. SLANDER OF TITLE;
11. FALSE DOCUMENTS LIABILITY;
12. UNJUST ENRICHMENT;
13. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

Darryl Cotton
6176 Federal Blvd.
San Diego, CA 92114
Telephone: (619) 954-4447
Fax: (619) 229-9387

Plaintiff *Pro Se*

UNITED STATES DISTRICT COURT

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Defendants.

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14. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS;
15. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
16. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
17. CONSPIRACY;
18. RICO;
19. DECLARATORY RELIEF; AND
20. INJUNCTIVE RELIEF.

DEMAND FOR JURY TRIAL

Plaintiff *Pro Se* Darryl Cotton ("Plaintiff," "Cotton" or "I") alleges upon information and belief as follows:

INTRODUCTION

1. The *origin* of this matter is a simpler-than-most real estate contract dispute regarding the sale of my property to defendant Larry Geraci ("Geraci").

2. My property qualifies to apply with the City of San Diego ("City") for a Conditional Use Permit ("CUP"). If the City issues the CUP, the value of the Property will immediately be worth at least **$16,000,000** because the CUP will allow the establishment of a Medical Marijuana Consumer Collective ("MMCC"). Under the regulatory scheme being effectuated by the State of California, an MMCC is a retail-for-profit marijuana store. Because the City is creating an incredibly small oligarchy by only issuing 36 MMCC retail licenses across the entire City, and will not issue any more for at least 10 years, the net present value of the Property, to an individual that has the capital and resources to build, develop and operate the MMCC, is at least **$100,000,000**.

3. However, the value of the Property is exponentially ***greater*** than $100,000,000 to organized, sophisticated and powerful criminals that are looking for legitimate businesses in the marijuana industry that they can use as fronts for their illegal operations.

4. Defendant Larry Geraci ("Geraci") is exactly such a criminal – he runs a criminal enterprise that has for years operated in the illegal marijuana industry. He operates publicly through a business providing tax and financial consulting services that he uses to invests his illegal gains and to provide money laundering services to other criminals who own illegal marijuana stores.

5. It is a matter of public record that Geraci is an Enrolled Agent with the I.R.S. and that he has been a named defendant in numerous lawsuits filed by the City against him for his owning/operating of numerous illegal marijuana dispensaries. As described below, he now operates

through employees and attorneys to hide his illicit operations. There is no way to ascertain exactly the breadth of his criminal enterprise given his use of private and legal proxies for his criminal activities.

6. In November of 2016, Geraci and I came to terms for the sale of my property to him, the terms of which included my having an ownership interest in the contemplated MMCC. However, I found out Geraci had induced me to enter into that agreement on fraudulent grounds and he breached the agreement in numerous ways.

7. Consequently, I terminated the agreement. After I terminated the agreement, Geraci, in concert with his office manager/employee Rebecca Berry ("Berry") and his counsel, Gina Austin ("Austin"), Michael Weinstein ("Weinstein") and Scott H. Toothacre ("Toothacre"), and their respective law firms, brought forth a meritless lawsuit in state court attempting to fraudulently deprive me of my property (the "Geraci Action").

8. After the Geraci Action was filed, I requested the City transfer the CUP application filed by Geraci on my property to me. The City refused. I then filed an action against the City seeking to have the City transfer the CUP application to me as Geraci had no legal basis to my property after our agreement was terminated (the "City Action;" and collectively with the Geraci Action, the "State Action.") Defendant attorneys named herein, and their respective law firms, are Geraci's counsel in the State Action (the "Attorney Defendants").

9. Throughout the course of the State Action, I have dealt with officials from the City of San Diego ("City") that have violated my constitutional rights in various ways. These actions, by themselves unlawful, have also had the effect of allowing, condoning, perpetuating and augmenting the irreparable harm done to me that was originally set in motion by Geraci, Berry and the Attorney Defendants.

10. I believe the City as an entity is prejudiced against me and has, and is, seeking to deprive me of my rights and property because of (i) my political activism for the legalization of

medical cannabis ("Political Activism") and/or (ii) as the result of political influence wielded by Geraci.

11. Irrespective of motivation and whether the City is in some manner connected to Geraci, which I believe to be true for the reasons explained below, but even I myself find hard to believe (I understand how crazy it sounds), it does not change the facts – the City has taken unlawful actions towards me.

12. For all intents and purposes, even assuming the City has not been unduly influenced by Geraci and his political lobbyists, the effect to me by the City's actions would be no different as if the City had actually purposefully conspired against me with Geraci to effectuate his unlawful scheme against me to fraudulently deprive me of my Property.

13. These officials and their unconstitutional actions include, but are not limited to:

a. A criminal prosecutor who induced me into entering into a misdemeanor plea agreement and did not tell me or my attorney representing me that as a consequence of entering that misdemeanor plea agreement I would be forfeiting my real property at issue here (which at that point in time was worth at least $3,000,000). That City attorney then used that misdemeanor plea agreement as the unreasonable basis of filing a lis pendens on my property, thereby unconstitutionally seizing my property, and filing a Forfeiture Action seeking to acquire my property. The City attorney initially requested $100,000 to cease its unfounded Forfeiture Action, but when my then-counsel produced evidence of my destitute financial status, the City agreed to only extort $25,000 from me (the short and long-term consequence of having to renegotiate the terms of my agreement with my financial backers to meet the January 2, 2018 deadline to pay this unconstitutional $25,000 obligation or lose the Property that is worth millions of dollars is the single most financially catastrophic event to happen in this litigation, other than Geraci's breach of our agreement and the actions he set in motion leading to this Federal Complaint.)

b. Officials at Development Services that were processing the CUP application submitted by Geraci violated my constitutional rights by denying me substantive and procedural due process by failing to provide notice about a material change in how they were processing my application; blatantly lying to me by telling me they could not accept a second CUP application on a property (which they later said I could after my then-counsel sent them a demand letter and noted there was no legal basis for their position and that he had personally filed a second CUP application on another property for another landlord in a similar situation to mine);

c. Civil attorneys for the City in the State Action that (a) violated their ethical duties by failing to inform the judges in the State Action about the Judge's mistakes/erroneous assumptions and/or working in concert with the State Court Judges and other City officials against me because of my Political Activism and (b) continuing to prosecute the State Action when they knew it was meritless, thereby maliciously putting more undue financial and emotional pressure on me by seeking money/fees and accusing me of having "unclean hands;" and

d. The State Court Judges presiding over the State Action whom I am forced to conclude, given that their Orders simply cannot be reconciled with the evidence and arguments made before them, are at the very least guilty of gross negligence by systemically denying me my constitutional rights by assuming that because I am a crazy pro se and that no pleading, evidence and oral argument I put forth over the course of months could actually contain enough legal and factual basis so as to warrant the relief I requested.

14. Alternatively, the state court judges have been grossly negligent towards me either because (i) they are unjustly dismissive of me because of my *pro se* and *blue-collar* status and simply did not review my pleadings and disregarded my arguments at the oral hearings (ii) or they are not impartial because, as one judge stated at the last hearing 2 weeks ago, he doubts my allegations of

ethical violations against counsel (including City attorneys) are true because he "knows them all well."

15. In the absence of additional information, I am forced to conclude that the state court judges, actually City officials, are acting in concert with other City Officials as part of an off-the-books illegal stratagem to deprive property owners of their properties via Forfeiture Actions if they are sympathetic to and/or share my Political Activism.

16. I am not the only individual who has had their property unconstitutionally seized as part of a Forfeiture Action that has been used by the City to extort significant financial gains from property owners that share my Political Activism. Should I prevail in the TRO, I may seek out other victims and bring forth a class action lawsuit against the City for their unconstitutional practice of seizing properties.

17. I pray ***this Federal Court*** will not be dismissive of me because of my *pro se* and blue-collar status and my Political Activism. I am painfully cognizant that from a *statistical standpoint*, given my pro se status and the allegations above, that I will be perceived immediately as an uneducated, legally-ignorant and conspiracy nut. I understand that. It is a reasonable assumption to make. I just pray that this Federal Court, before it finalizes its conclusion, that it genuinely reviews the evidence submitted with my TRO application because although from statistical standpoint I am probably a pro se conspiracy nut, there is the possibility that my case is that 1 in a 1,000,000 chance that there really is a conspiracy against me driven by the fact that the Property can be worth at least **$100,000,000** to sophisticated individuals, such as the defendants herein (excluding the City).

18. The truth is, I am a step away from literally losing my sanity, and I am aware of that. But I view this Federal Court as my last recourse to protect and vindicate my rights as a citizen of this great country and, if nothing else, that it may please explain to me its logic and evidence in issuing its orders – something the State Courts have never done.

19. I know how crazy all this sounds even as I write this now. But I would ask the Court to consider that I have owned this property since 1997 and have worked the better part of my life in building my business's and my future at this location. For me to lose this property and what it represents of my life's work is incredibly difficult to bear.

20. I have done everything in my power in the State Action, including selling off my future to finance the professional services of attorneys and representing myself pro se, but it has not availed me in the slightest. I have been before the State Judges over eight times and never once have they sought to explain, despite my repeated, specific and emotional pleas that they do so, why my case should not be immediately, summarily adjudicated my favor given undisputed evidence and facts in the record. (See Exhibit 1 (My opposition to a motion to compel my deposition filed in the State Action in which I described the totality of the circumstances to the state judge presiding, which was ignored.)

21. Thus, I am forced to conclude "that state courts [a]re being used to harass and injure individuals [such as myself], either because the state courts [a]re powerless to stop deprivations or [a]re in league with those who [a]re bent upon abrogation of federally protected rights." Mitchum v. Foster, 407 U.S. 225, 240, 92 S. Ct. 2151, 2161, 32 L. Ed. 2d 705 (1972).

22. I file this Complaint today before this Federal Court, pursuant to s 1983, because "[t]he very purpose of s 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights – to protect the people from unconstitutional action under color of state law, '*whether that action be executive, legislative, or* ***judicial***' Ex parte Virginia, 100 U.S., at 346, 25 L.Ed. 676." (*Id.*)

JURISDICTIONAL FACTS

23. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§§ 1331, 1343(3), 2283, and 18 U.S.C. § 1964 which confer original jurisdiction to the District Courts of the United States for all civil actions arising under the United States Constitution or the laws of the United States, as well as civil actions to redress deprivation under color of state law, of any right immunity or privilege secured by the United States Constitution. Further this court has subject matter jurisdiction pursuant to the Federal Racketeering Act, 18 U.S.C. section 1651, et seq. I also request this Court exercise its supplemental jurisdiction and adjudicate claims arising under the laws of the State of California pursuant to 28 U.S.C. § 1367(a).

24. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of state and/or local law of rights, privileges, immunities, liberty and property, secured to all citizens by the First, Fourth and Fourteenth Amendments to the United States Constitution, without due process of law. This action seeks injunctive and other extraordinary relief, monetary damages, and such other relief as this Court may find proper.

25. Venue is proper in this Court because the events described below took place in this judicial district and the real property at issue is located in this judicial district.

PARTIES

26. Cotton is, and at all times mentioned was, an individual residing within the County of San Diego, California.

27. Cotton is, and at all times material to this action was, the sole record owner of the commercial real property located at 6176 Federal Boulevard, San Diego, California 92114 ("Property").

28. Cotton is the President of Inda-Gro that he founded in 2010 which is a manufacturer of environmentally sustainable products, primarily horticulture lighting systems, that help enhance crop production while conserving energy and water resources and which operates from the Property.

29. Cotton is the President of 151 Farms, a not-for-profit organization he founded in 2015 that is focused on providing ecologically sustainable horticultural practices for the food and medical needs of urban communities which also operates from the Property.

30. Upon information and belief Defendant Larry Geraci ("Geraci") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

31. Upon information and belief, Defendant Rebecca Berry ("Berry") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

32. Upon information and belief, Defendant Gina Austin ("Austin") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

33. Upon information and belief, Austin Legal Group ("ALG") is, and at all times mentioned was, a company located within the County of San Diego, California.

34. Upon information and belief, Defendant Michael Weinstein ("Weinstein") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

35. Upon information and belief, Defendant Scott H. Toothacre ("Toothacre") is, and at all times mentioned was, an individual residing within the County of San Diego, California.

36. Upon information and belief, Ferris & Britton ("F&B") is, and at all times mentioned was, a company located within the County of San Diego, California.

37. Defendant City of San Diego ("City") is, and at all times mentioned was, a public entity organized and existing under the laws of California.

38. Cotton does not know the true names and capacities of the defendants named DOES 1 through 10 and, therefore, sues them by fictitious names. Cotton is informed and believes that DOES

1 through 10 are in some way responsible for the events described in this Complaint and are liable to Cotton based on the causes of action below. Cotton will seek leave to amend this Complaint when the true names and capacities of these parties have been ascertained.

39. At all times mentioned, defendants Geraci, Berry, Austin, ALG (the "Original Defendants") were each an agent, principal, representative, alter ego and/or employee of the others and each was at all times acting within the course and scope of said agency, representation and/or employment and with the permission of the others.

40. As detailed below, Weinstein, Toothacre & F&B are attorneys representing Geraci and Berry and joined the Original Defendants in their malfeasance when they became aware that the Geraci Lawsuit was vexatious, continued prosecuting the Geraci Lawsuit and took unlawful actions beyond the scope of their legal representation (F&B, from here on out, collectively, with the Original Defendants, the "Private Defendants").

41. As detailed below, the City, through various representatives, each acting either with purposeful intent, in concert with and/or with negligence, condoned, allowed, perpetuated and augmented the irreparable and unlawful actions taken by the Private Defendants with their own unconstitutional actions.

FACTUAL ALLEGATIONS

THE ORIGIN OF THIS MATTER - MY PROPERTY

42. In or around August 2016, Geraci first contacted Cotton to purchase the property and set up an MMCC. The Property is one of a very limited number of properties located in San Diego City Council District 4 that potentially satisfy the CUP requirements for a MMCC.

43. Over the ensuing weeks and months, Geraci and Cotton negotiated extensively regarding the terms of a potential sale of the Property and, in good faith, took various steps in

contemplation of finalizing their negotiations (including the execution of documents required for the CUP application). During these negotiations, Geraci represented to Cotton, among other things, that:

a. Geraci was a trustworthy individual because Geraci operated in a fiduciary capacity for many high net worth individuals and businesses as an Enrolled Agent for the IRS and the owner-manager of Tax and Financial Center, Inc., an accounting and financial advisory business;

b. Geraci, through his due diligence, had uncovered a critical zoning issue that would prevent the Property from being issued a CUP to operate a MMCC unless Geraci first lobbied with the City to have the zoning issue resolved (the "Critical Zoning Issue");

c. Geraci, through his personal, political and professional relationships, was in a unique position to lobby and influence key City political figures to have the Critical Zoning Issue favorably resolved and obtain approval of the CUP application once submitted;

d. Geraci was qualified to successfully operate a MMCC because he owned and operated several other marijuana dispensaries in the San Diego County area through his employee Berry and other agents; and

e. That through his Tax and Financial Center, Inc. company he knew how to "get around" the IRS regulations and minimize tax liability which is something he did for himself and other owners of cannabis dispensaries.

44. On November 2, 2016, Cotton and Geraci met and came to an oral agreement for the sale of Cotton's Property to Geraci (the "November Agreement").

45. The November Agreement had a condition precedent for closing, which was the successful issuance of a CUP by the City.

46. The November Agreement consisted of, among other things, Geraci promising to provide the following consideration: (i) a $50,000 non-refundable deposit for Cotton to keep if the

CUP was not issued, (ii) a total purchase price of $800,000 if the CUP was issued; and a 10% equity stake in the MMCC with a guarantee minimum monthly equity distribution of $10,000.

47. At the November 2, 2016 meeting, after the parties reached the November Agreement, Geraci (i) provided Cotton with $10,000 in cash to be applied towards the total non-refundable deposit of $50,000 and had Cotton execute a document to record his receipt of the $10,000 (the "Receipt") and (ii) promised to have his attorney, Gina Austin, speedily draft and provide final, written purchase agreements for the Property that memorialized all of the terms that made up the November Agreement.

48. The parties agreed to effectuate the November Agreement via two written agreements, one a "Purchase Agreement" for the sale of the Property and a second "Side Agreement" that contained, among other things, Cotton's equity percentage, terms for his continued operations of his Inda-Gro business and 151 Farms operations at the Property until the beginning of construction at the Property of the MMCC, and the guaranteed minimum monthly payments of $10,000 (collectively, the ("Final Agreement").

49. On that ***same*** day, November 2, 2016, after the parties met, reached the November Agreement and separated, the following email chain took place:

a. At 3:11 PM, Geraci emailed a scanned copy of the Receipt to Cotton.

b. At 6:55 PM, Cotton replied to Geraci stating the following:

> "Thank you for meeting today. Since we executed the Purchase Agreement in your office for the sale price of the property I just noticed the 10% equity position in the dispensary was not language added into that document. I just want to make sure that we're not missing that language in any final agreement as it is a factored element in my decision to sell the property. I'll be fine if you would simply acknowledge that here in a reply."

c. At 9:13 PM, Geraci replied with the following:

> ***"No no problem at all"***

50. In other words, on the same day the Receipt was executed and I received it from Geraci, I realized it could be misconstrued and that it was missing material terms (e.g., my 10% equity stake). Because I was concerned, I emailed him specifically, so that he would confirm that the Receipt was *not* a final agreement and he confirmed it. That is why I refer to this email as the "***Confirmation Email.***"

51. Thereafter, over the course of almost five months, the parties exchanged numerous emails, texts and calls regarding the Critical Zoning Issue, the Final Agreements and comments to various drafts of the Final Agreement that were drafted by Gina Austin.

52. On March 7, 2017, Geraci emailed a draft Side Agreement. The cover email states:

> "Hi Darryl, I have not reviewed this yet but wanted you to look at it and give me your thoughts. Talking to Matt, the 10k a month might be difficult to hit until the sixth month….can we do 5k, and on the seventh month start 10k?"

53. The attached draft of the Side Agreement to the March 7, 2017 email from Geraci provides, among other things, the following:

> a. "WHEREAS, the Seller and Buyer have entered into a Purchase Agreement[,] dated as of approximate even date herewith, pursuant to which the Seller shall sell to Buyer, and Buyer shall purchase from the Seller, the property located at 6176 Federal Blvd., San Diego, California 92114[.]"
> b. Section 1.2: "Buyer hereby agrees to pay to Seller 10% of the net revenues of Buyer's Business […] Buyer hereby guarantees a profits payment of not less than $5,000 per month for the first three months […] and $10,000 a month for each month thereafter[.]"
> c. Section 2.12, which provides for notices, requires a copy of all notices sent to Buyer to be sent to: "Austin Legal Group, APC, 3990 Old Town Ave, A-112, San Diego, CA 92110."

54. The draft was provided in a Word version and attached to the email from Geraci, the "Details" information of that Word document states that the "Authors" is "Gina Austin" and that the "Content created" was done on "3/6/2017 3:48 PM." (the "**Meta-Data Evidence**"; a true and correct copy of a screenshot of the Meta-Data Evidence is attached hereto as **Exhibit 2**).

55. I then found out that Geraci had been lying to me about the Critical Zoning Issue and had submitted a CUP application with the City BEFORE we even finalized the November Agreement.

56. Thus, Geraci breached the November Agreement by, *inter alia*, (i) filing the CUP application with the City without first paying Cotton the $40,000 balance of the non-refundable deposit; not paying Cotton the $40,000 balance; and (ii) failing to provide the Final Agreement as promised.

57. I gave Respondent Geraci numerous opportunities to live up to his end of the bargain. I was forced to, I had put off other investors and was relying on the $40,000 to make payroll and purchase materials for a new line of lights I was developing for my company Inda-Gro. I also, if I had to, would have sold part of my 10% equity stake in the MMCC once it was approved.

58. However, Geraci made it clear via his email communications that he was going to attempt to deprive me of the benefits of the bargain I bargained for when he refused to confirm via writing that he was going to honor the November Agreement and made a statement that he had his "attorneys working on it."

59. On March 21, 2017, after Geraci refused to confirm in writing that he was going to honor the November Agreement, I emailed him: "To be clear, as of now, you have no interest in my property, contingent or otherwise." Having anticipated his breach and being in desperate need of money, That same day, I entered into the Written Real Estate Purchase Agreement with a third-party. That deal was brokered by my Investor.

60. The next day, Weinstein emailed me a copy of the Geraci Lawsuit and filed a *Lis Pendens* on my Property. The Geraci Lawsuit is premised solely and exclusively on the allegation that the Receipt is the Final Agreement. As stated in Geraci's own words in a declaration submitted in State Action under penalty of perjury: "***On November 2, 2016, Mr. Cotton and I executed a***

written purchase and sale agreement for my purchase of the Property from him on the terms and conditions stated in the agreement[.]"

61. Thus, putting aside an overwhelming amount of additional and undisputed evidence, Geraci's own written admission in the Confirmation Email explicitly confirming the Receipt is not the Final Purchase Agreements is completely damning and dispositive. It contradicts the only basis of his complaint in the State Action and merits summary adjudication in my favor on the Breach of Contract cause of action and related claims (hereinafter, the Breach of Contract cause of action premised on the preceding facts is referred to as the "Original Issue").

62. The only argument that has been put forth in the State Action that at first glance appears to have merit is Geraci's argument that the Confirmation Email should be prevented from having legal effect pursuant to the Statute of Frauds (SOF) and the Parol Evidence Rule (PER). That argument was the basis of Geraci's demurrer to my cross-complaint in the State Action, which the State Court denied.

63. Thus, the FACTS prove Geraci is lying and that his Complaint is meritless. And the LAW is on my side as it will not prevent the admission of the Confirmation Email. With neither the facts nor the law supporting Geraci's lawsuits, why have the state court judges allowed both legal actions to continue to my great and irreparable physical, emotional, psychological and financial detriment?

64. The Receipt is the SOLE and ONLY basis of Geraci's claim to the Property in the Civil Action and the CUP application in the City Action. Gina Austin is defending Geraci and Berry in the City Action which is premised on the alleged fact that the Receipt is the Final Agreement for my Property.

65. The Receipt was executed in November of 2016.

66. Geraci's motivation for his unlawful behavior here is deplorable, but it is understandable – Greed. What I cannot understand, nor can the attorneys I have spoken with about these matters, is how or what Austin was thinking when she decided to represent Geraci and Berry in the City Action and, on numerous occasions, work with Weinstein and Toothacre in the Geraci Action? The record was already clear by then, and unless she wants to perjure herself or allege that I somehow can get Google to falsify its records, there is evidence that is beyond dispute that she is LYING to the State Court perpetuating a meritless case based solely on one single argument she knows is false.

67. She is representing to the State Court that the Receipt is the final agreement for my property, but she drafted several versions of the purchase and the side agreement for my property as late as March of 2017? This appears to me to be criminal. And really, really dumb.

68. She is supposedly incredibly smart, she was just named as one of the Top Cannabis Attorneys in San Diego. This is actually the basis of the fear of my Investor, a former attorney himself, what kind of influence does Geraci have that he can force and coerce Austin to commit a crime, to be able to get F&B to bring forth a vexatious lawsuit and to continue to maliciously prosecute a case with no proabable cause? Why have the judges not addressed the evidence?

69. For me it is impossible to ascertain the full extent of Geraci's influence, but it is significant and scary. It is even enough to force a convict out on parole to risk going back to jail - on January 17, 2018 while attempting to find a paralegal to assist me with filing and proof reading my pleadings in the State Action, my investor, a former federal judicial law clerk, called several paralegals to see if they could help me on short notice because my pleadings were not professional. He invited a paralegal named Shawn Miller of SJBM Consulting over to his home to interview him and give him the background. After he gave a description of the case and the Complaint and my Cross-Complaint, Shawn stated that he knew Geraci and his business associates.

70. Because Shawn knew Geraci, my investor told him that matters would not work out and asked him not to mention him to Geraci and/or his associates. My investor specifically told Shawn that as a paralegal, he was ethically and professionally bound to NOT disclose the conversation and its contents.

71. Not even two hours later, at around 10:00 PM at night, Shawn called my investor and told him that it would be in his "best interest" for him to use his influence on me to get me to settle with Geraci. This was the last straw for my investor because he does not understand the actions taken by the City, the attorneys and the judges in this action. Being threatened at his home late at night by a convict out on parole who was clearly aware that by violating his ethical and professional duties he would risk going back to jail, reflected to him, that Geraci, putting aside my own belief that he is a thuggish drug-lord at the head of a criminal enterprise, was someone that had a great deal of influence over criminals and was someone he did not want anything to do with.

72. My investor has been a nervous wreck knowing that Geraci and his associates, including a former special forces green beret (discussed below) know where he lives.

73. With all these seemingly unrelated people and events all coming together to protect, intimidate for, push unfounded legal claims for, and do Geraci's bidding has been disturbing and created nothing but turmoil in my life. Even my family, friends, businessmen and investors are concerned that matters have escalated to a degree that Geraci, in seeking to cover-up everything that has transpired here, may take drastic actions against them.

SUMMARY OF MATERIAL FACTS REGARDING WEINSTEIN, TOOTHACRE AND F&B

74. Initially, given the simple nature of the Original Issue, believing that I would be able to represent myself *pro se* in the Geraci Lawsuit. This was a foolish assumption as it turned out. Without wealth, justice is difficult to access. I prepared and filed an Answer to the Geraci Lawsuit and filed a Cross-Complaint. My Answer and Cross-Complaint were submitted in one document and,

therefore, denied by the State Court for failing to comply with procedural requirements. Thus, I was forced to realize, notwithstanding the simplicity of the Original Issue, that I would be unable to efficiently represent myself in a legal proceeding and entered into an agreement with a third-party (the "Investor") to finance my representation in the Geraci Lawsuit. (The Investor is also the individual who brokered the Real Estate Written Purchase Agreement between Mr. Martin and myself.)

75. In exchange for my Investor financing the Geraci Litigation, I exchanged a portion of the proceeds that I would receive from the Real Estate Purchase Agreement.

76. Investor did research, interviewed and coordinated my retaining the services of Mr. David Damien of Finch, Thornton and Baird ("FTB"). Investor recommended FTB for me to interview and choose as counsel because Mr. Damien had previously worked on a very similar matter, representing a property owner against an investor with whom he had an agreement to develop an MMCC, but with which he had a falling out before the CUP was issued. Mr. Damien was able to prevail in that lawsuit, a Writ of Mandate action against the City, and have the City transfer the CUP application filed by and paid for by the investor in that matter to the property owner (see *Engerbretsen v. City of San Diego*, 37-2015-00017734-CU-WM-CTL.) Thus, he appeared to be a perfect fit to help represent me against Geraci.

77. Investor negotiated with Mr. Damien for FTB to fully represent me in various legal matters without limitation and to do so via a financing arrangement of $10,000 a month. However, Mr. Damien did not actually want to do work in excess of $10,000 a month. Consequently, he was not prepared for several hearings and proved grossly incompetent.[6]

78. Mr. Damien was professionally negligent on December 7, 2017 when he represented me before the state court judge on an application for a TRO. Summarily, he failed in oral argument to raise with the state court judge the Confirmation Email – the single most powerful and dispositive

piece of evidence in this case. After he was berated by my Investor right outside the courtroom for his negligence, he withdrew as my counsel before even speaking with me via email.

79. The State Court Judge's order denying my TRO states "The Court, after hearing oral argument and taking into consideration papers filed, denies the request for Temporary Restraining Order and provides counsel with a hearing for the Preliminary Injunction." Based on the facts above, and as can be confirmed with the opposition to the TRO motion filed herewith, there is no factual or legal basis for the Court's decision.

80. I then filed *pro se* a motion for reconsideration regarding the TRO motion in which I explicitly stated that Damien had been negligent by failing to raise the Confirmation Email with the state court judge. That motion was heard on December 12, 2017.

81. On December 12, 2017, five days after the denial of my TRO application. I showed up with family, friends, and supporters, confident that I would have "my day in court" and that the State Court judge would realize Damien's negligence and issue the TRO.

82. Instead, I was not even given the opportunity to speak a single word. Before I could say anything, the State Court judge told me he was denying my motion for reconsideration and left the bench.

83. The minute order states: "The Court denies without prejudice the ex parte application. Defendant is directed to go by way of noticed motion." If I am correct in assuming that, even putting aside additional evidence, the Confirmation Email by itself dispositively resolves the case in my favor, then what is the basis of the State Court decision to deny my motion for reconsideration if he had reviewed my motion and understood that Damien had been negligent by failing to raise the Confirmation Email? And why was I not allowed to speak a single word? And how does allowing me to file by way of "noticed motion" address the exigency that was the basis of my TRO? And how

does it address the professional negligence of my counsel at the TRO hearing on December 7, 2017? It does not.

84. ***December 12, 2017 is, and always will be, the worst day of my life***. I was in so much shock from the denial of my motion for reconsideration and the way in which it happened, that I suffered a Transient Ischemic Attack, a form of stroke. I had to go to the Emergency Room that day after the state court judge denied my motion without even letting me speak a single word.

85. The next day my financial investor told me he was going to cease funding my personal needs and the Geraci Litigation because he needed to "cut his losses." I went to his home uninvited. I again pleaded with him to continue his support and he refused. I could not control myself and I ended up physically assaulting him.

86. He was going to call the police and have me arrested. I will forever be grateful that he did not and instead called a medical doctor who found me to be a danger to myself and others. (See **exhibit** 1.)

87. After the denial of my TRO application, I made numerous calls to the California State Bar and their Ethic Hotline regarding Damien's negligence at the TRO Motion hearing. I was directed to various Ethics opinions regarding not just his actions, but those of the other attorneys who were present who, because of the situation violated their ethical duties by failing to let the State Court know that it was ruling on a motion when it had not taken into account the single most powerful piece of evidence – the Confirmation Email.

88. The most relevant items that I was pointed to are the following:

a. "[A]n attorney has a duty not only to tell the truth in the first place, but a duty to '*aid the court in avoiding error and in determining the cause in accordance with justice and the established rules of practice*.' (51 Cal.App. at p. 271, italics added.)"

b. "A lawyer acts unethically where she assists in the commission of a fraud by implying facts and circumstances that are not true in a context likely to be misleading."[10]

89. When Weinstein first emailed me the complaint on March 22, 2017 from the state court action, I replied and noted the facts above, including the Confirmation Email. Thus, Weinstein knew from the very beginning that he was filing and prosecuting a vexatious lawsuit. Unless he wants to argue that he assumed the SOF and the PER would prevent the admission of the Confirmation Email AND he was not aware of the concept of promissory estoppel which would apply if the SOF and PER did apply in the first instance to prevent the admission of the Confirmation Email. (Or likely any of the other common law exceptions to the PER per the Rutter Guide such as fraud, formation defect, condition precedent, collateral agreement, ambiguity or subsequent agreements most of which would swallow up the rule thereby leaving him without a defense. Assuming of course that anyone was actually paying attention or being unduly influenced by Geraci via his political lobbyist. In fact, if I had the money I would hire a private investigator to see what ties Geraci has to my former attorneys at FTB that helped them forget basic fist year law school contract law concepts such as promissory estopel). In fact, an associate at FTB, when partner David Damien was not in the room, even let slip that some of Geraci's clients were also clients of their law firm, FTB. Should FTB not have to disclose that relationship as part of my representation because it could represent a conflict of interest? They never did, aside from the associate, Mr. Witt, who did so in small conversation when the partner Damien was not in the room.)

90. Even assuming the above is the case, that Weinstein was not aware of the concept of promissory estoppel, no later than when the State Court denied Geraci's demurrer based on the SOF and the PER, Weinstein knew that the case was at that point vexatious and yet he kept prosecuting it.

91. At the December 7, 2017 TRO hearing, Weinstein obviously knew that Damien was negligent in not raising, among the other arguments, the Confirmation Email in front of the State Court judge. I believe that given the language provided by the California State Bar, that he violated

his ethical obligations to the Court and, vicariously to me, by allowing the State Court judge to rule on the TRO motion without raising with him the fact that he was doing so without having taken into account material and dispositive evidence.

92. The obligations of an attorney must stop short of taking advantage of situations that lead to a miscarriage of justice, especially when he knows that I am facing severe financial and emotional distress. This appears to me to be an Abuse of Process, and this is in the best case scenario in which it is can be assumed that he is not vexatiously continuing to prosecute this case when he knows that there is no factual or legal basis for it.

93. I filed Notices of Appeal from the denial of my TRO application and Motion for Reconsideration. I hired counsel, Mr. Jacob Austin, a criminal defense attorney, who graciously agreed to help me on my appeals on a contingent basis (and with a guarantee of ultimately being paid by my investor if I did not prevail on my Appeal).

94. I was working on the draft of my Appeal, when Weinstein, on January 8, 2018, filed two motions to compel my deposition in the State Action and a large amount of discovery requests.

95. Against the advice of my counsel and my investor, I decided to take advantage of the opportunity to oppose the Motion to Compel and highlight to the judge the Confirmation Email and the actions by counsel as described above. I filed my Opposition and it is attached here as Exhibit 1.

96. The Motions to Compel were granted and the various requests I set forth in my opposition were denied.

97. The order issued by the judge granting the motion to compel and denying the relief I requested, is predicated on the erroneous belief that there is "disputed" evidence in the record. Up until that point in time I believed that the state court judge decision was due to Damien's negligence, I now believe that there are other nefarious factors at play and justice simply cannot be had in San Diego state court.

98. That same day, January 25, 2018, I emailed Weinstein specifically accusing him of violating his ethical obligations as he has an "affirmative duty" to inform the State Court judge about his erroneous assumption regarding the fact that the Confirmation Email was not disputed. He replied with a perfectly crafted legal response, by stating that he "had not made any misrepresentations to the courts about facts or the law," which is completely accurate. My accusation was that he was violating an affirmative duty to act, not that he had taken an act that was a misrepresentation.

SUMMARY OF ADDITIONAL MATERIAL FACTS REGARDING THE CITY

The City Prosecutor – Mark Skeels

99. In July of 2015, I leased a portion of my building to a tenant who managed a non-profit corporation, "Pure Meds," to run a cannabis dispensary based on his representations that he was fully compliant with the laws. I did not know then what I know now, that leasing my property to Pure Meds without the proper City permit would be unlawful.

100. Although Pure Meds operated from my building, it was completely segregated with separate entrances and addresses.

101. On April 6, 2016, the City shut down Pure Meds and brought charges against Pure Meds and myself almost exactly one year later. On April 5, 2017, realizing and acknowledging my error, I pled guilty to one misdemeanor charge of a Health and Safety Code section HS 11366.5 (a) violation.

102. My plea agreement states that "***Mr. Cotton retains all legal rights pursuant to prop 215.***" The judge asked me during the hearing why that language was added. I explained that I run 151 Farms at my Property and that I cultivate medical cannabis there in compliance with prop 215. Because I was giving up my 4th amendment rights in the plea agreement, I wanted to be sure that I

was protected for my cultivation at the Property pursuant to Proposition 215. In other words, my Plea Agreement and my discussion was predicated on my keeping my Property.

103. Immediately upon entering into the Plea Agreement, the City filed a Petition for Forfeiture of Property based on the Plea Agreement I entered into and filed a Lis Pendens putting yet another cloud on my title.

104. Deputy City Attorney Skeels did not explain to me, nor my counsel, that he intended to seek the forfeiture of my property or that it was even a possibility. In fact, he did the opposite, he made it seem as if he was giving me a sweetheart deal with a small fine and informal probation.

105. My criminal defense attorney who defended me in that action submitted a sworn declaration stating that he was not aware and was not made aware by Skeels that the forfeiture of my property was a possibility. Skeels did not care.

106. In other words, Skeels fraudulently induced me to enter into a plea agreement without telling me the consequences that he was actually planning to pursue. This appears to me to be a violation of my constitutional right to be made aware of the consequences to pleading guilty to a criminal charge. Based on representations of Skeels, I didn't fully understand the charges or the effects of admitting guilt. I would not have entered into a misdemeanor plea agreement if the consequence of that action was to forfeit my property for which at that point in time I was still going to receive in excess of $3,000,000. It is ludicrous to believe otherwise.

107. In fact, this unlawful seizure is, I believe, part of an unconditional strategy by Skeels and the City to deprive individuals of their property. This belief is bolstered by the fact that I have been told on numerous occasions by numerous criminal attorneys as I have explained these facts that it is incredibly rare for prosecutors to talk to defense counsel in the presence of the accused, much less directly communicate with a defendant.

108. Skeels told me he was giving me a "sweetheart" deal. I feel that if it wasn't a pressure tactic than it was essentially a "confidence game" and a complete sham designed to gain undeserved trust and pretend to be helpful while concealing his true intent of pursuing Asset Forfeiture. Under information and belief, I feel that this is just one example of what appears to be endemic, systemic maneuvering to confiscate the properties of as many defendants as possible.

109. This seemingly mild misdemeanor, my leasing out my property to third-parties over who I had no control, with its $239 fine, ended up in an unimaginable $25,000 extortion that also forced me to renegotiate with numerous parties to get it at a time when I was completely destitute because of this legal action brought forth by Geraci and his crew of criminals.

110. Once I hired FTB, Damien reached out to Skeels and according to Damien, even Skeels was not aware of the fact that there would be a forfeiture action. While that would be believable under some circumstances, the Petition for Forfeiture of Property & Lis Pendens were filed the next day so it is impossible to believe him.

111. Ultimately, facing numerous lawsuits and needing to prioritize my time and limited financing, I settled and agreed to pay the City $25,000. For the record, I am not here in this legal action seeking to have that Plea Agreement nullified. Per the Forfeiture Settlement Agreement that Skeels and Damien convinced me into entering, if I fight the Stipulation for Entry of Judgement, then I lose the Property. I am stating these series of events so that it can be taken into account with the other actions by the City via Development Services and the Officers of the Court that together make it clear that there is a pattern of discriminatory and unconstitutional behavior towards me by the City. Whether these actions are because of my Political Activism, Geraci's influence or a combination of both, will be proven through discovery and trial. (As a side note in regards to Skeels: I would hope that Judge Cano may take it upon herself to sanction Skeels for his manipulation of the Plea Agreement that she approved and which clearly did not contemplate the Forfeiture Action that he

brought under it as she and I had explicitly discussed the continuation of my cultivation practices on the Property, the basis of the Prop 215 language added into the Plea Agreement. Who knows how many more victims Skeels has extorted and how many orders by judges he has manipulated?)

The City's Development Services Department

112. On March 21, 2017, when I terminated my agreement with Geraci and sold the property to a third-party, I also emailed the Development Project Manager responsible for the CUP application on my Property. I stated:

> "the potential buyer, Larry Geraci (cc'ed herein), and I have failed to finalize the purchase of my property. As of today, there are no third-parties that have any direct, indirect or contingent interests in my property. The application currently pending on my property should be denied because the applicants have no legal access to my property."

113. The City refused to cease processing the CUP application as the application was submitted by Geraci's employee, Berry.

114. However, on May 19, 2017, after numerous emails and calls with various individuals at Development Services, the Project Manager provided a letter addressed to Abhay Schweitzer, Geraci's architect who is in control of processing the CUP application with City, stating, in relevant part:

> "City staff has been informed that the project site has been sold. In order to continue the processing of your application, with your project resubmittal, ***please provide a new Grant Deed***, updated Ownership Disclosure Statement, and a change of Financial Responsible Party Form if the Financial Responsible Party has also changed."

115. Thus, as of May 19, 2017, I proceeded under the assumption that I was not at risk of losing the CUP process because the CUP process was on hold until, *inter alia*, I executed a Grant Deed. **If a CUP application is submitted and it is denied, then another CUP application cannot be resubmitted for a year on the same Property.**

116. Sometime after May 19, 2017, I contacted Development Services and requested that I be allowed to submit a second CUP application. Development Services denied my request and stated that they could not accept a second CUP application on the same property. This is a blatant lie. Damien had, in the Engerbretsen matter, submitted a second CUP application on behalf of his client with the City.

117. On September 22, 2017, my then-counsel Damien wrote to Development Services noting their refusal to accept a second CUP application and that such "refusal is not supported by any provision of the Municipal Code."

118. The City replied on September 29, 2017, by stating, inter alia, that I could submit a second CUP application, but then also stated the following:

> "As you've acknowledged in your letter, DSD is currently processing an application, submitted by Ms. Rebecca Berry [...] Please be advised that the City is only able to make a decision on one of these applications; the first project deemed ready for a decision by the Hearing Officer will be scheduled for a public hearing. Following any final decision on one of the CUP applications submitted [...], the CUP application still in process would be obsolete and would need to be withdrawn."

119. On October 30, 2017, through my then-counsel Damien, I filed a Motion for Writ of Mandate directing the City to transfer the CUP application to me. It was not until I reviewed the Declaration of Abhay Schweitzer in Support of Geraci's opposition to my Motion for a Writ of Mandate that I came to find out that the City had, in complete contradiction of the letter provided on May 19, 2017, continued to process the Geraci CUP application on MY Property without the executed Grant Deed.

120. The City never informed me of this or provided notice of any kind. Had I known, I would have taken alternative steps to secure my rights to the CUP process. Per Schweitzer's declaration, everything was going great and he anticipates the CUP being approved in March of 2018.

121. To summarize, first, DSD communicated that it would not process a CUP application on my Property without an executed grant deed by me. However, without any notice or knowledge and in complete contradiction of its own letter stating it required an executed Grant Deed, it continued to prosecute the Geraci CUP application.

122. Second, when I first reached out to DSD to submit a second CUP application, it blatantly lied by stating that they could not accept a second CUP application on the property when it had on other occasions for similarly situated individuals.

123. Third, not until my then-counsel sent a demand letter noting there was no legal basis for the City's refusal, did DSD allow me to submit a CUP application. But, the City created an unjust "horse-race" between myself and Geraci.

124. DSD has been processing the Geraci CUP application for over a year at that point, allowing me to submit a second CUP application on those terms is a **futile** task that would only have resulted in needless additional expense and actions and which, per the declaration of Schweitzer, was a fool's task as it is expected that the CUP will issue in March. This is simply a malicious ploy to get me to expend more money and resources when all these parties knew that I was fighting a meritless lawsuit and incredibly financially challenged.

City Civil Attorneys

125. For the same reasons explained above, the City attorney at the TRO Motion hearing should have informed the State Court judge about Damien's negligence and the Confirmation Email.

126. Further, the City through its attorney, filed its Answer to my application for a Writ of Mandate AFTER the TRO Motion hearing. At that point, the City knew that Damien had been negligent and the attorney for the City even communicated to Damien that he "should have won" based on the pleading papers.

127. Pursuant to the Answer filed, even though the City KNOWS that the case is meritless, it is seeking legal fees against me and it is accusing me, among other things, of being guilty of "unclean hands."

128. The City is accusing me of wrongdoing when it knows that I am not in the wrong. The only wrongs that the City could hold against me are the leasing of my Property to a non-profit that operated an unlicensed dispensary. I recognize I was wrong in not seeking out confirmation of the dispensary's legality and I pled guilty, for which I was extorted $25,000.

129. The only other potential reason is that the City, when taking into account all of the other unfounded and unconstitutional actions described herein, is that the City is systemically discriminating against me whenever it can because of my Political Activism and/or in connection Geraci as a result of his influence.

The State Court Judges

130. At the oral hearing held on January 25, 2018 on Geraci's motions to compel, the State Court judge started the hearing by stating that he does not believe that counsel against whom I made my allegations would engage in the actions I described. He specifically stated that he has known them all for a long period of time.

131. As I view it, he was telling me he has some form of relationship with attorneys and that he does not believe they would engage in unethical actions. OK, I understand that. I could just be a crazy pro per, but why did he not review the evidence submitted and make a judgment that takes that evidence into account? I literally begged him in my opposition, and for that matter, in my Motion for Reconsideration, that he please provide the reasoning for why the Confirmation Email does not dispositively address my breach of contract cause of action.

132. The Order he issued granting Weinstein's Motions to Compel and denying my requests in my Opposition states the following: "***Disputed*** evidence exists suggesting that Cotton was

not the only person who possess the right to use the subject property." THERE IS **NO** DISUPTED EVIDENCE. The only evidence in the record ever put forth by Geraci for his claim to my Property is his allegation that the Receipt is the final purchase agreement for my property, a lie which is blatantly exposed by his admission in the Confirmation Email. That, again, is NOT DISPUTED.

133. To clearly highlight this issue: The Confirmation Email was the subject of a demurrer that the State Court judge ruled on, it was objected to on SOF and PER grounds, not its authenticity that has never been challenged, disputed or denied since November 2, 2016!

134. I was preparing yet another Motion for Reconsideration regarding his order granting the Motions to Compel, exhausting my limited resources attempting to make all kinds of arguments when I came to a realization: even if he did turn around and issue some kind of order favorable to me, all the evidence proves that he is at best, grossly negligent, and, at worst, conspiring against me because of my Political Activism.

THE FILING OF THIS FEDERAL COMPLAINT – THREATHS

135. On **February 3, 2018**, two individuals visited me. (I am not naming them because one of the individuals is a former special forces operative for the US military and, for the reasons described below, an agent of Geraci.) These two individuals came to my Property and during the course of that conversation contradicted themselves by stating first that they had nothing to do with Geraci and that they would buy the Property/CUP and assured me a long term job.

136. When I told them that Mr. Martin was paying a total purchase price of $2,500,000, they told me they would pay significantly *more* than $2,500,000 and that it would also be beneficial for me as I would be able to "end" the litigation with Geraci.

137. I then explained to them that I was already contractually and legally obligated to pursue the litigation action against Geraci, prevail, and then transfer the Property and the CUP application to Mr. Martin.

138. They looked at each other and then contradicted themselves. They told me that Geraci was "powerful" and had "deep ties and influence" with the "City" and that it would not go well for me if I did not agree to settle the action with Geraci. These individuals are NOT simple, street level individuals. One of them is a high-net worth individual that recently sponsored a large art gala at San Diego State (the "Sponsor").

139. The other is a former special forces operative for the US Military (the "Operative"). The Operative told me that because of my Plea Agreement, Geraci could use his influence with the City to have the San Diego Police Department raid my Property at any time and have me arrested. I told him that all the cannabis on my Property was compliant with Proposition 215 and my rights to cultivate as I had specifically discussed with the judge who accepted the plea agreement. I showed it to them, I have a large photocopy of it on my wall at the Property, and it was clear they were expecting me to be more intimidated.

140. Yesterday, **February 8, 2018**, when I was wrapping up this Federal Complaint and all the required documents for the filing of my TRO submitted concurrently with herewith, I sent an email notice **ONLY** to counsel in the State Action (the "Federal Notice Email").

141. NO ONE ELSE KNEW THAT WAS PLANNING ON FILING IN FEDERAL COURT WITH THESE CAUSES OF ACTION YESTERDAY. NOT EVEN MY OWN FAMILY, FRIENDS, INVESTORS, SUPPORTERS, PARALEGALS AND COUNSEL.

142. I sent the Federal Notice Email at **3:01 PM**.

143. At **3:36 PM**, not even an hour later, the Operative called me and told me ***emphatically*** that he no longer has anything to do with the Sponsor, Geraci or anything related to me. He was

aware that I was immediately filing in Federal Court. He asked that I note name him or involve him in this Federal lawsuit. Because he is ex-special forces, I have no desire to do so. Should the Sponsor, Geraci, and whichever attorney informed him deny this allegation, then they can name him and be responsible for the consequences of doing so. I note I have the phone records to prove this and am creating copies that will be kept separately by third-parties.

144. How could Sponsor and Operative claim to not know Geraci? Why is Operative calling me to tell me that he has nothing to do with Geraci or the actions that have transpired here? I ONLY told counsel in the State Action. Clearly, Sponsor and Operative are working with Austin, Weinstein, Toothacre and Geraci and they were sent to coerce and/or intimidate me at the behest of Geraci in an attempt to force me to settle this lawsuit when they came to visit me on February 8, 2018.

CONCLUSION

145. I was researching the last Order by the state judge that denied my requested relief because, he decrees, that I have not Exhausted my Administrative Remedies. In the Rutter guide it states that: "The failure to pursue administrative remedies does not bar judicial relief where the administrative remedy is *inadequate*, or where it would be *futile to pursue* the remedy" and "administrative remedies also inadequate when irreparable harm would result by requiring exhaustion before seek judicial relief" [Rutter Guide 1:906.26.]

146. Additionally, it stated in that subsection that: "Generally, a plaintiff is not required to exhaust state administrative or judicial remedies before suing under federal civil rights statutes." [Rutter Guide 1:906.29]

147. This reference led to me researching Section 1983 claims that I already knew allowed federal action, but I was not aware could stop State Court actions while it adjudicated the Federal Questions. That Rutter Guide section has a link to Mitchum v. Foster.

148. The United States Supreme Court held in Mitchum v. Foster that Section 1983 claims in Federal Court are an exception to the Anti-Injunction Act that would allow a Federal Court to stay a state court action. In reaching this decision, the United States Supreme Court noted the following from the legislative debates leading to the passing of Section 1983:

> "Senator Osborn: 'If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate[.]
>
> Representative Perry concluded: 'Sheriffs, having eyes to see, see not; judges, having ears to hear, hear not; witnesses conceal the truth or falsify it; grand and petit juries act as if they might be accomplices…. (A)ll the apparatus and machinery of civil government, all the processes of justice, skulk away as if government and justice were crimes and feared detection. Among the most dangerous things an injured party can do is to appeal to justice.'"

In my case, among other things, the City attorney unreasonably seized my property, they "saw" and "heard" me speak with the judge regarding my right to retain my Prop 215 rights and my property, but they pretend that they do not; I have repeatedly and emphatically demeaned myself and begged the State Court judges in writing and at oral hearings to hear me regarding the Confirmation Email, but they do not "hear me;" all attorneys present at the TRO hearing on December 7, 2017 where obligated to aid the Court in avoiding error, but they "conceal the truth or falsify it." The City attorneys "skulk away" and pretend to not be involved by stating that this case is a "private dispute" between private actors.

149. It is futile to seek to protect and vindicate my rights in State Court. I have been repeatedly told by numerous attorneys that if I were to appeal the State Court orders that there would be severe backlash because judges take severe and personal offense when their judgment is challenged. And that it is especially true when it turns out that they were actually wrong as there is then a record of their "abuse of discretion" – "***Among the most dangerous things an injured party can do is to appeal to justice***." (*Id.*)

150. Thus, I find myself here and now today. I do not ask this Federal Court to believe me, I only ask that this Court please genuinely review the evidence submitted with my application submitted herewith for a TRO and the causes of action I bring forth in this Federal Complaint. If Geraci and/or the City is allowed to passively and/or actively sabotage the CUP application, I will have lost everything of value in my life completely unlawfully and unconstitutionally.

151. Please, I realize that this is a Federal Court and my Political Activism will not endear me to the Federal Judiciary as an entity, but I do not come before this Federal Court to enforce or argue rights related to my Political Activism, but rather for the protection and vindication of those rights that are granted to me by the Constitution of the United States of America.

FIRST CLAIM 42 U.S.C. SEC. 1983: 4TH AMEND. UNLAWFUL SEIZURE (As against the City of San Diego)

152. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1 through 135 as though fully set forth herein.

153. Defendant(s), acting under the color of state law, county ordinances, and penal codes, individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have violated Plaintiff's right to be free from unreasonable search and seizure under the Fourth Amendment.

154. Well after my property was raided because the wrong-doings of my adjoining tenant (Pure Meds), it occurred upon the City that (although they declined to press charges shortly after the raid and waited the full statute of limitations under California Penal Code 364/365 days) I could easily be charged and set up for an Asset Forfeiture action, so they filed. Upon entering a plea following City Attorney Skeels' repeated assurances that the plea was a "sweetheart deal", and for the sake of expediency, I went ahead and pled guilty.

155. I thought the action was over at that time. I was wrong, the City used this transaction to further their suspicious utilization of Asset Forfeiture and almost immediately filed a Lis Pendens.

THAT is where the truly unreasonable seizure comes into play. This was essentially a retroactive punishment tacked on to the punishment that the City had already meted out.

156. Defendants (City Attorney's Office) violated Plaintiffs' right to procedural due process by issuing a Lis Pendens as a result of the plea without any prior notice and under false pretenses. Defendant City has violated Plaintiffs' right to be free from unreasonable search and seizure under the Fourth Amendment by conducting in such underhanded behavior.

157. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an amount according to proof at trial.

SECOND CLAIM FOR 42 U.S.C. SEC. 1983: 14TH AMEND. DUE PROCESS VIOLATIONS (As against City)

158. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

159. Defendants, acting under the color of state law, county ordinances, regulations, customs and usage of regulations and authority, individually and in their official capacity, and in violation of 42 U.S.C. § 1983, have deprived Plaintiff of the rights, privileges or immunities secured by the Due Process Clause of the Fourteenth Amendment.

160. Defendant City, specifically Development Services, has violated Plaintiff's rights to substantive and procedural due process by the actions alleged above in regards to my Property and the associated CUP application pending on my Property.

161. As a direct and proximate result of the foregoing, Plaintiffs have been damaged in an amount according to proof at trial.

THIRD CLAIM FOR BREACH OF CONTRACT (Against Geraci, Berry, Austin, ALG and DOES 1 through 10)

162. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

163. Geraci and Cotton entered into an oral agreement regarding the sale of the Property and agreed to negotiate and collaborate in good faith on mutually acceptable purchase and sale documents reflecting their agreement.

164. The November 2nd Agreement was meant to be the written instrument that solely memorialized the partial receipt of the non-refundable deposit.

165. Cotton upheld his end of the bargain, including by deciding to not sell his Property to another party while Geraci, among other matters, ostensibly prepared a CUP application for submission.

166. Under the parties' oral contract, Geraci was bound to negotiate the terms of an agreement for the Property in good faith. Geraci breached his obligation to negotiate in good faith by, among other things, intentionally delaying the process of negotiations, failing to deliver acceptable purchase documents, failing to pay the agreed-upon non-refundable deposit, demanding new and unreasonable terms in order to further delay and hinder the process of negotiations, and failing to timely or constructively respond to Cotton's requests and communications.

167. Geraci breached the contract by, among other reasons, alleging the November 2nd Agreement is the final agreement between the parties for the purchase of the Property. Berry, as Geraci's agent is also liable. And Gina Austin and ALG were fully aware and apparently supportive of these actions based on the multiple drafts and revisions of what was to be the final purchase agreement.

168. As a direct and proximate result of Geraci's breaches of the contract, Cotton has been damaged in an amount not yet fully ascertainable, has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of contract. This intentional, willful, malicious,

outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

FOURTH CAUSE OF ACTION FALSE PROMISE – (As Against Geraci, Berry and DOES 1 through 10)

169. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

170. On November 2, 2016, among other things, Geraci falsely promised the following to Cotton without any intent of fulfilling the promises.

171. Geraci would pay Cotton the remaining $40,000 of the non-refundable deposit prior to filing a CUP application;

172. Geraci would cause his attorney to promptly draft the final integrated agreements to document the agreed-upon deal between the parties;

173. Geraci would pay Cotton the greater of $10,000 per month or 10% of the monthly profits for the MMCC at the Property if the CUP was granted; and

174. Cotton would be a 10% owner of the MMCC business operating at Property if the CUP was granted.

175. Geraci had no intent to perform the promises he made to Cotton on November 2, 2016 when he made them.

176. Geraci intended to deceive Cotton in order to, among other things, cause Cotton to rely on the false promises and execute the document signed by the parties at their November 2, 2016 meeting so that Geraci could later deceitfully allege that the document contained the parties' entire agreement.

177. Cotton reasonably relied on Geraci's promises.

178. Geraci failed to perform the promises he made on November 2, 2016.

179. As a result of the actions taken in reliance on Geraci's false promises, Geraci created a cloud on Cotton's title to the Property. As a further result of Geraci's false promises, Geraci has diminished the value of the Property, reduced the price Cotton will be able to receive for the Property, and caused Cotton to incur significant unnecessary costs and attorneys' fees to protect his interest in his Property. As a further result of Geraci's false promises, Cotton has been deprived of the remaining $40,000 of the non-refundable deposit that Geraci promised to pay prior to filing a CUP application for the Property.

180. Geraci's representations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages under Civil Code section 3294.

FIFTH CLAIM OF BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (As against Geraci, Berry, Austin, ALG, the City of San Diego, and DOES 1 through 10)

181. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

182. Geraci breached the implied covenant of good faith and fair dealing when, among other actions described herein, he alleged that the November 2nd Agreement is the final purchase agreement between the parties for the Property.

183. As discussed above, Geraci, Berry, by and through counsel (Austin and ALG) and personally continued to negotiate terms of the initial agreement for months following the November 2 Agreement.

184. Additionally, the City of San Diego, specifically Development Services have not dealt with the CUP application fairly as discussed above. They have been paid application fees to process the CUP on my property. I am the sole deed holder and have at all times held exclusive possession of the Federal Blvd. property.

185. In dealing with San Diego, they have breached the implied covenant of good faith and fair dealing when among other actions, they have not kept me informed or allowed me to gain ownership of the CUP and have even went so far as to deny my rights to Due Process in failing to do so.

186. 1 have suffered and continue to suffer damages because of Geraci's actions, his attorneys actions and the City's Actions that constitute a breach of the implied covenant of good faith and fair dealing.

187. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

SIXTH CLAIM OF BREACH OF FIDUCIARY DUTY (As against Geraci and DOES 1 through 10)

188. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

189. Geraci stated he would honor the agreement reached on November 2nd, 2016, which included a 10% equity stake in the Business and a guaranteed monthly equity distribution of $10,000 a month.

190. Geraci stated he would pay the balance of the non-refundable deposit as soon as possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary prerequisite for submission of the CUP application.

191. Geraci acknowledged that the November 2nd Agreement was not the final agreement for the purchase of the Property via email on November 2nd, 2016.00

Enrolled Agent – Fiduciary Duty

192. Geraci represented to Cotton that as an Enrolled Agent for the IRS he was an individual that could be trusted as he operated in a fiduciary capacity on a daily basis for many high-net worth individuals and businesses. Further, that as an Enrolled Agent he would be able to structure the tax filings of the medical marijuana dispensary and the owners, including Cotton, in such a way that the tax liability would be very limited and, consequently, would maximize Cotton's share of the profits.

193. Geraci, by representing himself to be an Enrolled Agent of the IRS that would, among other things, submit on behalf of Cotton tax filings with the IRS, created a fiduciary relationship between Cotton and himself.

Real Estate Broker – Fiduciary Duty

194. Geraci is a licensed real estate Broker.

195. Geraci took responsibility for the drafting of the Purchase Agreement for the Property stating he would have his attorney provide a draft and, further, that Cotton did not require his own counsel to revise the drafts of the real estate purchase contract.

196. Geraci induced Cotton into letting him effectuate the real estate transaction by claiming that Cotton could trust Geraci.

197. Breach of Fiduciary Duties

198. Cotton has violated his fiduciary duties by, among the other actions described herein, fraudulently inducing Cotton into executing the November 2nd Agreement and alleging it is the final agreement for the purchase of the Property.

199. Cotton has suffered and continues to suffer damages because of Geraci's actions that constitute a breach of his fiduciary duties.

200. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

SEVENTH CLAIM FOR FRAUD IN THE INDUCEMENT (As against Geraci, Berry, ALG, Austin and DOES 1 through 10)

201. Plaintiff incorporates by reference each and every allegation contained above as though fully set forth herein.

202. Geraci made promises to Cotton on November 2nd, 2016, promising to effectuate the agreement reached on that day, but he did so without any intention of performing or honoring his promises.

203. Geraci had no intent to perform the promises he made to Cotton on November 2nd, 2016 when he made them, as is clear from his actions described herein, that he represented he would be preparing a CUP application.

204. In fact, he had already deceived Cotton and submitted a CUP application PRIOR to November 2, 2016.

205. Geraci intended to deceive Cotton in order to, among things, execute the November 2nd Agreement.

206. Cotton reasonably relied on Geraci's promises and had no idea Geraci had already started the CUP application process.

207. Geraci failed to perform the promises he made on November 2nd, 2016, notably, his delivery of the balance of the non-refundable deposit and his promise to treat the November 2nd Agreement as a memorialization of the $10,000 received towards the non-refundable deposit and not the final legal agreement for the purchase of the Property.

208. Cotton has suffered and continues to suffer damages because he relied on Geraci's representations and promises.

209. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

EIGHTH CLAIM FOR FRAUD/FRAUDULENT MISREPRESENTATION (As against Geraci, Berry, Austin, ALG and DOES 1 through 10)

210. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

211. Each of the Defendants and their agents intentionally and/or negligently made representations of material fact(s) in discussions with Cotton. On November 2, 2016, Geraci represented to Cotton, among other things, that:

212. He would honor the agreement reached on November 2nd, 2016, which included a 10% equity stake in the Business and a guaranteed monthly equity distribution of $10,000 a month.

213. He would pay the balance of the non-refundable deposit as soon as possible, but at the latest when the alleged critical zoning issue was resolved, which, in turn, he alleged was a necessary prerequisite for submission of the CUP application.

214. He understood and confirmed the November 2nd Agreement was not the final agreement for the purchase of the Property.

215. That he, Geraci, as an Enrolled Agent by the IRS was someone who was held to a high degree of ethical standards and that he could be trusted to prepare and forward the final legal agreements, honestly effectuate the agreement that they had reached, including the corporate structure of the contemplated businesses so as to ultimately minimize Cotton's tax liability.

216. That the preparation of the CUP application would be very time consuming and take hundreds of thousands of dollars in lobbying efforts.

217. Geraci knew that these representations were false because, among other things, Geraci had already filed a CUP application with the City of San Diego prior to that day. At that point in time, all of his declarations regarding the issues that needed to be addressed, his trustworthiness and his intent to follow through with accurate final legal agreements were false. His subsequent communications via email, text messages and Final Agreement draft revisions make clear that he continued to represent to Cotton that the preliminary work of preparing the CUP application was underway, when, in fact, he was just stalling for time. Presumably, to get an acceptance or denial from the City and, assuming he got a denial, to be able to deprive Cotton of the $40,000 balance due on the non-refundable deposit.

218. Geraci intended for Cotton to rely on his representations and, consequently, not engage in efforts to sell his Property.

219. Cotton did not know that Geraci's representations were false.

220. Cotton relied on Geraci's representations.

221. Cotton's reliance on Geraci's representations were reasonable and justified.

222. As a result of Geraci's representations to Cotton, Cotton was induced into executing the November 2nd Agreement, giving Geraci the only basis of his Complaint and, consequently, among other unfavorable results, allowing Geraci to unlawfully create a cloud on title to his Property. Thus, Cotton has been forced to sell his Property at far from favorable terms.

223. Cotton has been damaged in an amount of no less than $2,000,000 from this Claim alone. Additional damages from potential future profit distributions and other damages will be proven at trial.

224. Geraci's representations were intentional, willful, malicious, outrageous, unjustified, done in bad faith and in conscious disregard of the rights of Cotton, with the intent to deprive Cotton of his interest in the Property.

225. This intentional, willful, malicious, outrageous and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

NINTH CLAIM FOR TRESPASS (As against Geraci, Berry, Toothacre, Weinstein, F&B and DOES 1 through 10)

226. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

227. The Property was owned by Cotton and is in his exclusive possession.

228. Geraci, or an agent acting on his behalf, illegally entered the subject property on or about March 27, 2017, and posted two NOTICES OF APPLICATION on the Property.

229. Geraci's attorney, Michael Weinstein, emailed Cotton on March 22, 2017 stating that Geraci or his agents would be placing the aforementioned Notices upon Cotton's property.

230. Geraci knew that he had fraudulently induced Cotton into executing the November 2nd Agreement and, consequently, he had no valid legal basis to trespass unto Cotton's Property.

231. Alternatively, setting aside the fraudulent inducement, on March 21, 2017, Cotton, having discovered Geraci's criminal scheme to deprive him of his Property, emailed Geraci stating that he no longer had any interests in the Property and should not trespass on his Property, yet he continued to do despite being warned not to.

232. Geraci's Notices of Application posted on his Property has caused and continues to damage Cotton because the discouragement of future businesses, partnerships and potential buyers it immediately caused to which Weinstein was a knowing party.

233. Cotton has no adequate remedy at law for the injuries currently being suffered in that it will be impossible for Cotton to determine the precise amount Cotton has suffered and continues to suffer damages because of Geraci's actions.

234. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

TENTH CLAIM FOR SLANDER OF TITLE (As against Geraci, Berry, Austin, ALG, F&B and the City of San Diego)

235. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

236. Geraci disparaged Cotton's exclusive valid title by and through the preparing, posting, publishing, and recording of the documents previously described herein, including, but not limited to, a Complaint in state court and Lis Pendens filed on the Property.

237. The City of San Diego separately also used/abused the Lis Pendens process to strong arm me and violate my 4th Amendment Rights against unreasonable seizure.

238. Defendants knew that such documents were improper in that at the time of the execution and delivery of the documents, Defendants had no right, title, or interest in the Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Cotton's legal title to the Property. By posting, publishing and recording documents, Defendants' disparagement of Cotton's legal title was made to the world at large.

239. As a direct and proximate result of all Defendants' conduct in publishing these documents, Cotton's title to the Property has been disparaged and slandered, and there is a cloud on Cotton's title, and Cotton has suffered and continues to suffer damages, including, but not limited to, lost future profits, in an amount to be proved at trial, but in an amount of no less than $2,000,000.

240. As a further and proximate result of Defendants' conduct, Cotton has incurred expenses in order to clear title to the Property. Moreover, these expenses are continuing, and Cotton will incur additional expenses for such purpose until the cloud on Cotton's title to the Property has

been removed. The amounts of future expenses are not ascertainable at this time but will be proven at trial.

241. The amount of such damages shall be proven at trial (expert witness testimony will likely be of critical importance).

ELEVENTH CLAIM FOR FALSE DOCUMENTS LIABILITY (As against Geraci, Berry, Austin, ALG, F&B and DOES 1 through 10)

242. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

243. Geraci filed a Complaint against Cotton and a Lis Pendens on the Property with a public office, respectively, this Court and the San Diego County Recorder's Office.

244. Geraci knew the Complaint and Lis Pendens, both solely and completely predicated upon his allegation that the November 2nd Agreement was the final agreement for the purchase of the Property, was false and unfounded when he filed them.

245. Geraci, his agents and counsel, all knew at the time of the filing he was committing a crime (in violation of California Penal Code Section 115 PC) and did so knowingly anyway.

246. Cotton has suffered and continues to suffer damages because of Geraci's actions.

247. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

TWELFTH CLAIM OF UNJUST ENRICHMENT (As against Geraci, Berry, and the City of San Diego)

248. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

249. Geraci represented to Cotton that executing the November 2nd Agreement was only to memorialize the $10,000 good-faith deposit towards the total $50,000 non-refundable deposit, but

Geraci now alleges that the November 2nd Agreement is the final agreement for the purchase of the Property.

250. Geraci himself confirmed via email that the November 2nd Agreement is not the final agreement.

251. Had Geraci described the effect of executing the November 2nd Agreement in the way that Geraci presently interprets it, then Cotton would never have signed the November 2nd Agreement.

252. Geraci will be unjustly enriched at the expense of Cotton if he is permitted to retain the interest in the Property that he now asserts under the November 2nd Agreement.

253. The City of San Diego was able trick me into entering deals that caused me to lose $25,000 to remove the Lis Pendens from the property.

254. Cotton has suffered and continues to suffer damages because of Geraci's actions.

255. This intentional, willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages.

THIRTEENTH CLAIM OF INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, Austin, F&B and DOES 1 through 10)

256. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

257. Cotton has an ongoing prospective business relationship with Mr. Martin and the City via by the then-filed CUP application that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application.

258. Further, specifically, Cotton has an ongoing prospective business relationship with Mr. Martin for the sale of the Property that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the sale of the Property.

259. Defendants knew of Cotton's ongoing and prospective business relationship with Mr. Martin and the City arising from and related to the CUP Application and defendants knew of Cotton's ongoing and prospective business relationship with the new buyer for the Property.

260. Defendants intentionally engaged in acts designed to interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP application, and the new buyer, including without limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP application.

261. As a direct and proximate result of the defendants' conduct, Cotton has suffered and will continue to suffer damages in an amount not yet fully ascertainable and to be determined according to proof at trial.

262. The aforementioned conduct by defendants was despicable, willful, malicious, fraudulent, and oppressive conduct which subjected Cotton to cruel and unjust hardship in conscious disregard of Cotton's rights, so as to justify an award of exemplary and punitive damages in an amount to be determined according to proof at trial, including pursuant to Civil Code section 3294.

FOURTEENTH CLAIM OF NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS – (As Against Geraci, Berry, and DOES 1 through 10)

263. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

264. Cotton has an ongoing prospective business relationship with the City that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the approval of the CUP application. In addition, Cotton has an ongoing prospective business

relationship with the new buyer of the Property that was resulting, and would have resulted, in an economic benefit to Cotton based on and in connection with the sale of the Property.

265. Defendants knew or should have known of Cotton's ongoing and prospective business relationship with the City arising from and related to the CUP Application, and defendants knew or should have known of Cotton's ongoing and prospective business relationship with the new buyer for the Property.

266. Defendants failed to act with reasonable care when they engaged in acts designed to interfere, and which have interfered and are likely to continue to interfere, with Cotton's relationship with the City, the CUP application, and the new buyer, including without limitation, their refusal to acknowledge they have no interest in the Property and/or the CUP application.

267. As a direct and proximate result of the defendants' conduct, Cotton has suffered and will continue to suffer damages in an amount not yet fully ascertainable and to be determined according to proof at trial.

FIFTH CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (As against All Defendants)

268. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

269. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. Geraci has event sent convicts to intimidate, coerce and threaten my investors by telling him that it would be in his "best interest" to use his influence me to settle with Geraci.

270. All of the above-named defendants know that this is an unfounded lawsuit against me and the continued malicious attempts at depriving me of my rights, money and sanity can only be described as outrageous.

271. The defendants have acted for the purpose of causing me emotional distress so severe that it could be expected to adversely affect mental health and well-being.

272. The defendants' conduct is causing such distress, which includes, but is not limited to, chronic loss of sleep, paranoia, and other injuries to health and well-being. All of these injuries continue on a daily basis.

273. To the extent that said outrageous conduct was perpetrated by certain Defendants, the remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the deleterious consequences. As a proximate result of said conduct, I have suffered and continue to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses.

274. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff's rights, entitling Plaintiff to recover punitive damages in amounts to be proven at trial.

SIXTHTEENTH CLAIM FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(As against All Defendants)

275. Plaintiff realleges and incorporates by reference the allegations contained above as though fully set forth.

276. All Defendants, and each of them, knew or reasonably should have known that the conduct described herein would, and did, proximately result in physical and emotional distress to Plaintiff. Being as all of the above-named defendants know that this is an unfounded lawsuit against

me and the continued malicious attempts at depriving me of my rights, money and sanity can only be described as outrageous.

277. At all relevant times, all Defendants, and each of them, had the power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or prohibit said conduct.

278. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise protect Plaintiff. Therefore, whether or not the defendants have acted for the express purpose of causing me this extreme emotional distress, they have caused it. And they should have known this would happen.

279. Further, they have been made aware and have been on notice. Weinstein of F&B, specifically. To the extent that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff's emotional and physical distress would thereby increase, and with a wanton and reckless disregard for the deleterious consequences to Plaintiff.

280. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

SEVENTEENTH CLAIM FOR CONSPIRACY (As against Geraci, Berry, Austin, ALG, Weinstein, the City of San Diego and DOES 1 through 10)

281. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

282. Geraci fraudulently induced Cotton to execute the Ownership Disclosure Statement on October 31st, 2016, alleging that the Ownership Disclosure Statement was necessary because the

parties did not have a final agreement in place at that time, thus, he needed it to show other professionals involved in the preparation of the CUP application and the lobbying efforts to prove that he, Geraci, had access to the Property.

283. As a sign of good-faith by Cotton as they had not reached a final agreement for the sale of the Property. Geraci wanted something in writing proving Cotton's support of the CUP application at his Property because he needed to immediately spend large amounts of cash to continue with the preparation of the CUP application and the lobbying efforts. However, Geraci promised that the Ownership Disclosure Statement would not under any circumstances actually be submitted to the City of San Diego. Further, that it was impossible to submit the CUP application as the critical zoning issue had been resolved with the city of San Diego.

284. The Ownership Disclosure Statement is also executed by Rebecca Berry and denotes Rebecca Berry is the "Tenant/Lessee" of the Property.

285. Geraci represented to Cotton that Rebecca Berry could be trusted and was one of his best employees who was familiar with the medical marijuana industry.

286. Cotton has never met or entered into any agreement with Rebecca Berry.

287. Rebecca Berry knew that she had not entered into a lease of any form with Cotton for the Property.

288. Upon information and belief, Rebecca Berry allowed the CUP application to be submitted in her name on behalf of Geraci because Geraci has been a named Cotton in numerous other lawsuits brought by the City of San Diego against him for the operation and management of unlicensed and unlawful marijuana dispensaries.[14]

289. Rebecca Berry knew that she was filing a document with the City of San Diego that contained a false statement, specifically that she was a lessee of the Property.

290. Rebecca Berry, at Geraci's instruction or her own desire, submitted the CUP application as Geraci's agent, thereby Geraci's scheme to deprive Cotton of his Property.

291. Gina Austin and ALG represented Berry and Geraci in the initial Writ motion involving the City of San Diego, additionally, Austin and ALG drafted the proposed Final Purchase Agreements and subsequent revisions well into March of 2017. Therefore these acts were in full knowledge that the November 2 Agreement (which this whole case is premised on) was NOT intended to be the full and final agreement. The egregiousness of not informing the court of these material facts and allowing this case to proceed so far is a slight to the Superior Court to which an officer of the court has a duty of honesty, integrity and candor. No other possible explanation comes to mind other than Austin and ALG have been knowingly working in concert together to defraud the court, and myself.

292. Inexplicably, no one working in The City Attorney's Office of the City of San Diego have raised their voices to assist me when they have received all the above information. They have seen my evidence, they have expressed surprise that I was not granted a TRO after reading my Motion for Reconsideration for the TRO. Yet, knowing this is an unfounded case San Diego is still permitting this injustice continue.

293. The San Diego Department of Services seemingly worked exclusively for Geraci and Berry and essentially blocked me from having any say as to the CUP for my property. They have continued to process the CUP application for Geraci and Berry when they know that Geraci and Berry have no legal right to my Property.

294. Then I was told to submit a new application which necessarily creates an inequitable race – all these facts can only be reconciled if one is to accept that 1) the city is prejudiced against me or; 2) Geraci has them in his pocket.

295. Not only that, this all follows the tyrannical practices of Deputy City Attorney Mark Skeels who tricked me and my young defense counsel into setting myself up for an Asset Forfeiture Action that ultimately resulted in a $25,000 extortion. Under the Fourth Amendment, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno,* 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). In light of the situation I was in, the unforeseen and extreme result must surely constitute an "unreasonable" seizure.

296. Further adding to my confusion, frustration and inability to gain any traction in protecting my own interests, the Honorable Judge Wohlfeil presiding over my case has not seemed interested in reading any of my prior submissions. He "knows [the attorneys opposing me] well" and I believe based on that he is biased against me now that I am pro se and a likely mark for everyone to be able to walk over and take advantage of with no repercussions. At best, Judge Wohlfiel probably hopes my case can be settled out of court relieving him of further responsibility (or culpability?) in regard to my case. At worst, Wohlfeil's seemingly purposeful negligence at this point is an intentional cover-up of the fact that he does not care about my case or he is actively helping Geraci.

297. Ultimately, whether it was done purposefully, working in concert with, and/or because of gross negligence, all the parties here, even if operating in their own "mini-conspiracies," have de facto operated in a one, large conspiracy by perpetuating and augmenting the unlawful actions and harm caused to Darryl.

298. Cotton has suffered and continues to suffer damages because of actions of all defendants such that it would be "a challenge to imagine a scenario in which that harassment would

not have been the product of a conspiracy." [*Geinosky v. City of Chicago* (7th Cir. 2012) 675 F3d 743, 749].

299. As a direct and proximate result of Defendants', their agents' and conspirators' concerted, intentional (and even negligent), willful, malicious, outrageous, and unjustified conduct entitles Cotton to an award of general, compensatory, special, exemplary and/or punitive damages. unlawful conduct. Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to his damage in amounts to be proven at trial.

EIGHTEENTH CLAIM FOR RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT (As against All Defendants)

300. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

301. The elements of civil RICO are as fol-lows: (1) conduct, (2) of an enterprise, (3) through a pattern (4) of racketeering ac-tivity, (5) resulting in injury.

302. Geraci, as proven by public records of lawsuits filed by the City against him for the operating of illegal dispensaries, has run an enterprise of illegal marijuana dispensaries over the course of years. His enterprise if focused on marijuana dispensaries and related financial support services meant to unlawfully circumvent IRS tax liabilities. As discussed above, he uses employees, third-parties, attorneys and criminals to operate his criminal enterprise.

303. Geraci specifically told Cotton, when fraudulently inducing him to enter into the November Agreement, that as an Enrolled Agent for the IRS, he was uniquely positioned to "get around" paying IRS Code Section 280(e). At the time, it appeared to Cotton that Geraci was stating he had some form of unknown method to do so lawfully. In retrospect, it is apparent that he is

providing money laundering services for himself and others, using his Tax and Financial company as legitimate front for his behind the scenes unlawful activities.

304. Geraci runs his enterprise through his employees, such as Berry, who use their names on applications, such as the CUP application at issue here, to provide anonymity and for Geraci to stay off the radar of law enforcement agencies. For example, Geraci, and Berry, were required by law to state the names of all individuals who had an interest in the CUP when the CUP application was filed. Geraci's name is NOT on the CUP application. His office manager, Berry, is. Had this instant lawsuit not required him to fraudulently attempt to enforce the Receipt as the final agreement for the Property, there would be no record of his ownership in the CUP application.

305. Geraci is the lead perpetrator in the enterprise. It is Geraci that had his office manager, Berry submit the CUP application with material omissions (his name); having Gina Austin, his attorney, represent him in the State Actions although she knows she is violating her ethical (and potentially legal) obligations to the Court by representing Geraci under the false premise that the Receipt is the final agreement for the Property; Geraci is directing Weinstein, also his attorney, to continue to represent him when Weinstein knows that there is no factual or legal basis to continue prosecuting the State Action against me to my great detriment.

306. Mr. Geraci has told me that he has run many illegal marijuana dispensaries through his employee, Berry. I believe that he has invested the proceeds of the pattern of racketeering activity into the enterprise endeavors to continuously open more illegal dispensaries. Further, because he has evaded criminal prosecution and additionally managed to pull off this farce of a civil suit against me, I believe he has also used said monies to compensate Austin and Weinstein, and, de facto, their respective law firms, for the unethical and unlawful actions against me. How else can one explain why two, ostensibly intelligent attorneys who statistically speaking should be smarter than most would take the actions they have which are clearly unethical and unlawful.

307. The way in which the City has dealt with me in every avenue also points to the distinct possibility that Geraci's "influence" has in fact tainted the state legal process against me. I have been specifically told by Mr. Dwayne and his associate Mr. L that Geraci has deep connections to the City's politicians.

308. To my knowledge all defendants and Does above in some way shape or form have worked in conjunction with one another willfully, occasionally negligently, but at all times in association against me. Most certainly, Austin, ALG, Weinstein, Toothacre, Berry and F&B do Geraci's bidding and are complicit in all of his dishonest schemes.

309. As a direct and proximate result of the Defendants', their agents' and coconspirators' plot to participate in the conduct of the affairs of their conspiracy and wrongs, alleged herein, Plaintiff has been and is continuing to be injured in his property, person and business as set forth herein.

NINTEENTH CLAIM OF DECLARATORY RELIEF (As Against All Defendants)

310. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

311. An actual controversy has arisen and now exists between Cotton and all defendants concerning their respective rights, liabilities, obligations and duties based on the actions described herein.

312. A declaration of rights is necessary and appropriate at this time in order for the parties to ascertain their respective rights, liabilities, and obligations because no adequate remedy other than as prayed for exists by which the rights of the parties may be ascertained.

313. Accordingly, Cotton respectfully requests a judicial declaration of rights, liabilities, and obligations of the parties. Specifically, Cotton requests a judicial declaration that (a) Cotton is the sole owner of the Property, (b) Cotton is the owner and sole interest-holder in the CUP

application for the Property submitted on or around October 31, 2016, (c) defendants have no right or interest in the Property or the CUP application for the Property submitted on or around October 31, 2016, and (d) the Lis Pendens filed by Geraci be released.

INJUNCTIVE RELIEF (As Against All Defendants)

314. Cotton hereby incorporates by reference all of his allegations contained above as if fully set forth herein.

315. For the reasons argued above, Cotton respectfully requests that all defendants be immediately be notified and enjoined that their actions, even if under the color of effectuating professional legal services, the law or the authority of any governmental agency, cease violating Mr. Cotton's rights.

316. That the Geraci be ordered to continue to pay for the costs associated with getting approval of the CUP application and the development of the MMCC per his agreement with Cotton, and as he stated in his declaration in the state action.

317. That the City not be allowed to passively and/or affirmatively sabotage the CUP so as to limit its liability for its actions stated herein.

318. Such as other injunctive relief as is required based on the facts alleged above to protect and vindicate my rights.

//

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PRAYER FOR RELIEF

WHEREFORE, Cotton prays for relief against defendants as follows:

1. That the Court order the Lis Pendens on the Property be released;

2. That the Court order, by way of declaratory relief, that there is no purchase agreement between the Geraci and that Cotton is the sole owner of the Property;

3. That the CUP application be transferred to me;

4. General, exemplary, special and/or consequential damages in the amount to be proven at trial, but which are no less than $5,000,000;

5. Punitive damages against all defendants;

6. Sanctions against counsel as this Court may find warranted based on the allegations above that will be proven to be true during the course of this litigation;

7. That this Court appoint Mr. Cotton counsel until such time as he has the financial wherewithal to pay for counsel himself; and

8. That other relief is awarded as the Court determines is in the interest of justice.

Dated: February 9, 2018.

Darryl Cotton,
Cotton and Cotton Pro Se

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Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

PROOF OF SERVICE

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of San Diego, California, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On **June 16, 2022**, I caused to be served the following documents:

1. **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

2. **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

3. **DECLARATION OF GINA M. AUSTIN, ESQ. IN SUPPORT OF MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

4. **DECLARATION OF DOUGLAS A. PETTIT, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

[ ] **BY FACSIMILE TRANSMISSION (Code Civ. Proc. §§ 1013(e)-(f)):** From fax number (858) 755-8504 to the fax numbers listed below. The facsimile machine I used complied with Cal. Rules of Court, rule 2.306 and no error was reported by the machine. I caused the machine to print a transmission record, a copy of which will be maintained with the document(s) in our office.

[X] **BY MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

[X] **BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))**
[ ] **BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))**
[ ] **BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))**

[ ] **BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251):** Based on an agreement between the parties to accept service by e-mail or electronic transmission, I caused such document(s) to be electronically served to those parties listed below from e-mail address lzamora@pettitkohn.com. The file transmission was reported as complete and a copy of the Service Receipt will be maintained with the original document(s) in our office.

[ ] **BY ELECTRONIC SERVICE (California Rule of Court 2.251):** By submitting an electronic version of the document(s) via file transfer protocol (FTP) to OneLegal Online Court Services through the upload feature at www.onelegal.com.

///

[ ] BY PERSONAL SERVICE: I caused the above-described document to be personally served on the parties listed on the service list below at their designated business addresses **pursuant to Code Civ. Proc. §1011**.

Andrew Flores, Esq.
Law Office of Andrew Flores
954 4th Avenue, Suite 412
San Diego, CA 92101
Tel: (619) 256-1556
Fax: (619) 274-8253
Email: Andrew@FloresLegal.Pro
Plaintiff in *Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **June 16, 2022**, at San Diego, California.

Luis Zamora

EXHIBIT 3

ANDREW FLORES, ESQ (SBN:272958)
LAW OFFICE OF ANDREW FLORES
427 C Street, Suite 220
San Diego CA, 92101
P:619.356.1556
F:619.274.8053
Andrew@FloresLegal.Pro

Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ANDREW FLORES, an individual, AMY SHERLOCK, on her own behalf and on behalf of her minor children, T.S. and S.S.

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP APC, a California Corporation; GERACI, an individual;; REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, and BAIRD, a Limited Liability Partnership, JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, a California Corporation; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; EULENTIAS DUANE ALEXANDER, an individual; ALLIED SPECTRUM, INC, a California corporation, PRDIGIOUS COLLECTIVES, LLC a California Limited Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 37-2021-00050889-CU-AT-CTL

PLAINTIFF'S OPPOSITION TO GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S SPECIAL MOTION TO STRIKE PLAINTIFF'S FIRST AMENDED COMPLAINT

Date: August 5, 2022
Time: 9:00 a.m.
Dept: C-75
Judge: Hon. James A Mangione
Filed December 3, 2021
Trial: Not Set.

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I. INTRODUCTION

Defendant attorney Gina Austin's business practice – the Proxy Practice – is illegal. The Proxy Practice is not immunized by the litigation privilege or the *Noerr-Pennington* doctrine. Therefore, attorney Austin's motion to strike plaintiffs' complaint pursuant to Code Civil Procedure § 425.16 (the "anti-SLAPP" statute) must be denied (the "Motion").

II. SUMMARY OF THE CASE AND MOTION

Attorney Austin and her law firm have for years successfully carried out an illegal conspiracy with their clients to illegally acquire ownership interests in cannabis businesses. The sole and dispositive factor in making this determination is conclusively established by the "shall deny" language set forth in California Business & Professions Code § 19323 and § 26057.[1]

As set forth below, the Austin Legal Group's interpretation of the statute contradicts its plain language, the Legislative intent pursuant to which they were passed, and the Department of Cannabis Control's interpretation. The litigation filed or maintained by the Austin Legal Group based on the Proxy Practice is in furtherance of the illegal conspiracy and is inherently anticompetitive. It prevents lawful qualified applicants from acquiring ownership of cannabis businesses and prevents, like this Motion, parties with rights to the businesses, and the CUPs/licenses pursuant to which they operate, from vindicating their rights. It is therefore sham litigation and not immunized.

III. MATERIAL FACTUAL AND PROCEDURAL BACKGROUND

A. California's cannabis public policy requires the disclosure of all owners of a cannabis business.

On June 27, 2017, the Legislature enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act (SB 94). (2017 Cal SB 94.) SB 94 § 1 materially provides as follows:

The Legislature finds and declares as follows:

---

[1] Terms not otherwise defined herein have the meaning set forth in the Complaint.

(a) In November 1996, voters approved Proposition 215, which decriminalized the use of medicinal cannabis in California. Since the proposition was passed, most, if not all the regulation has been left to local governments.

(b) In 2015, California enacted three bills—Assembly Bill 243 (Wood, Chapter 688 of the Statutes of 2015); Assembly Bill 266 (Bonta, Chapter 689 of the Statutes of 2015); and Senate Bill 643 (McGuire, Chapter 719 of the Statutes of 2015)—that collectively established a comprehensive state regulatory framework for the licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medicinal cannabis in California. This regulatory scheme is known as the Medical Cannabis Regulation and Safety Act (MCRSA).

(c) In November 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Under Proposition 64, adults 21 years of age or older may legally grow, possess, and use cannabis for nonmedicinal purposes, with certain restrictions. In addition, beginning on January 1, 2018, AUMA makes it legal to sell and distribute cannabis through a regulated business.

(d) Although California has chosen to legalize the cultivation, distribution, and use of cannabis, it remains an illegal Schedule I controlled substance under federal law. The intent of Proposition 64 and MCRSA was to ensure a comprehensive regulatory system that takes production and sales of cannabis away from an illegal market and curtails the illegal diversion of cannabis from California into other states or countries.

….

(f) In order to strictly control the cultivation, processing, manufacturing, distribution, testing, and sale of cannabis in a transparent manner that allows the state to fully implement and enforce a robust regulatory system, ***licensing authorities must know the identity of those individuals who have a significant financial interest in a licensee, or who can direct its operation***. Without this knowledge, regulators would not know if an individual who controlled one licensee also had control over another. To ensure accountability and preserve the state's ability to adequately enforce against all responsible parties the state must have access to key information.

(g) So that state entities can implement the voters' intent to issue licenses beginning January 1, 2018, while avoiding duplicative costs and inevitable confusion among licensees, regulatory agencies, and the public and ensuring a regulatory structure that prevents access to minors, protects public safety, public health and the environment, as well as maintaining local control, it is necessary to provide for a single regulatory structure for both medicinal and adult-use cannabis and provide

> for temporary licenses to those applicants that can show compliance with local requirements.

(2017 Cal SB 94 at § 1.)

Pursuant to MCRSA and Proposition 64, the Legislature has mandated always that State cannabis licensing agencies "issue state licenses ***only*** to qualified applicants." (BPC §§ 19320(a) (emphasis added), 26055(a) ("Licensing authorities may issue state licenses ***only*** to qualified applicants." (emphasis added).)

The keys statutes here are BPC § 19323 that applied pursuant to MCRSA and BPC § 26057 that applied pursuant to Proposition 64. Materially summarized, Proposition 64 created the licensing scheme that set forth the criteria for cannabis licenses for *nonprofit* medical entities in BPC § 19323. Proposition 64 created the licensing scheme that set forth the criteria for cannabis licenses for *for-profit* recreational entities in BPC § 26057. SB 94 consolidated the nonprofit and for-profit medical licensing scheme repealing MCRSA, including BPC § 19323, and making the criteria in BPC § 26057 applicable to all cannabis applications.

B. Definition of "applicant" and "owner" under MCRSA and Proposition 64

An "applicant" for a State cannabis license under MCRSA was defined as:

> (1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.
>
> (2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.
>
> (3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

BPC § 19300.5 (emphasis added).[2]

An "applicant" for a State cannabis license under AUMA was defined as:

> (1) The owner or owners of a proposed licensee. "Owner" mean all persons having (A) an aggregate ownership interest (other than a security interest, lien, or encumbrance) of 20 percent or more in the licensee and (B) the power to direct or cause to be directed, the management or control of the licensee.
>
> (2) If the applicant is a publicly traded company, "owner" includes the chief executive officer and any member of the board of directors and any person or entity with an aggregate ownership interest in the company of 20 percent or more. If the applicant is a nonprofit entity, "owner" means both the chief executive officer and any member of the board of directors.

BPC § 26001(a).[3]

C. Criteria mandating the denial of an application for a State license under MCRSA and Proposition 64.

MCRSA added § 19323 to the BPC that provided the criteria pursuant to which an application must be denied, which materially provided as follows:

> (a) The licensing authority ***shall deny*** an ***application*** if either the ***applicant*** or the premises for which a state license is applied do not qualify for licensure under this chapter.
>
> (b) The licensing authority ***may deny*** the ***application*** for licensure or renewal of a state license if any of the following conditions apply:
>
> (1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.
>
> [….]
>
> (3) The applicant has failed to provide information required by the licensing authority.

---

[2] BPC § 19300.5 added by Stats 2016 ch 32 § 8 (SB 837), effective June 27, 2016. Repealed Stats 2017 ch 27 § 2 (SB 94), effective June 27, 2017.

[3]

> […]
>
> (8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

Materially, BPC § 26057 was amended by SB 837, which deleted subsection (3) and renumbered subsection (8) to subsection (7), effective June 27, 2016. (Stat 2016 ch 32 at § 27 (SB 837).)

AUMA added § 26057 to the BPC that provided the criteria pursuant to which an application must be denied, which materially provides as follows:

> (a) The licensing authority shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division.
>
> (b) The licensing authority ***may deny*** the ***application*** for licensure or renewal of a state license if any of the following conditions apply…. (4) Failure to provide information required by the licensing authority…. (7) The applicant… has been sanctioned by… a city… for unauthorized commercial marijuana activities or commercial medical cannabis activities… in the three years immediately preceding the date the application is filed with the licensing authority...

(Proposition 64 at § 6.1.)

D. Regulations adopted by the Department of Cannabis Control pursuant to Proposition 64 mandate that "owners" like Geraci and Razuki must be disclosed and applications must be denied if the owners have been sanctioned for unlicensed commercial cannabis activities.

Statutes are laws written and passed by the Legislature that apply to the whole State. Regulations are rules created by a State agency that interpret statutes and make them more specific. The Department of Cannabis Control created regulations that apply to cannabis businesses that effectuate the cannabis statutes passed by the Legislature set forth in the Business & Professions Code.

Pursuant to CCR § 5002(c)(20)(M), an applicant is required to disclose "a detailed description of any administrative orders or civil judgments for… ***sanctions for unlicensed commercial cannabis activity by a licensing authority***… against the applicant or a business entity in which the applicant was an owner or officer within the three years immediately preceding the date of the application." (Cal. Code Regs., tit. 16, § 5002(c)(20)(M) (emphasis added).)

Pursuant to CCR § 5032, "Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the Act." (Cal. Code Regs., tit. 16, § 5032(b).) This section makes clear that licensees like Malan and Berry, had the Berry Application been approved, cannot conduct commercial cannabis activities "pursuant to a contract with any person who is not licensed" like Geraci and Razuki. The Proxy Practice directly and completely violates this regulation; it is illegal.

E. Lawrence Geraci and Salam Razuki's sanctions for unlicensed commercial cannabis activities.

On October 27, 2014, Geraci was sanctioned by the City of San Diego for unlicensed commercial cannabis activities in *City of San Diego v. The Tree Club Cooperative, Inc. et al.* San Diego Superior Court Case No. 37-2014-0020897-CU-MC-CTL (the "Tree Club Judgement"). (First Amended Complaint ("FAC") at ¶ 43, fn.7.)

On June 17, 2015, Geraci was sanctioned by the City of San Diego for unlicensed commercial cannabis activities in *City of San Diego v. CCSquared Wellness Cooperative, et al.* Case No. 37-2015-00004430-CU-MC-CTL (the "CCSquared Judgment and collectively with the Tree Club Judgment, the "Geraci Judgments"). (FAC at ¶ 43, fn.7.)

On or about April 15, 2015, defendant Razuki was sanctioned for unlicensed commercial cannabis activities in *City of San Diego v. Stonecrest Plaza, LLC* Case No. 37-2014-00009664-CU-MC-CTL (the "*Stonecrest Judgment*"). (FAC at ¶ 46, fn. 8.)

F. The Motion to Strike is entirely predicated on the false argument that BPC §§ 19323/26057 do not bar Geraci and Razuki's ownership of cannabis businesses even though they were not disclosed in the applications and were sanctioned for unlicensed commercial cannabis activities.[4]

The Motion is 20 pages long and attaches an additional 97 pages of exhibits. But the entire validity of the Motion and this case is determined by whether BPC §§ 19323/26057 bar ownership of cannabis businesses by Geraci and Razuki. The entirety of the Austin Legal Group's argument that the statues do not is as follows:

> Plaintiffs allege that Austin's "Proxy Practice is illegal and violates numerous State and City laws, most notably, BPC §§ 19323 et seq. and 26057 et seq." (FAC, ¶ 314.) Business and Professions Code section 26057, formerly section 19323, states the licensing authority "shall deny an application if either the applicant, or the premises for which a state license is applied, do not qualify for licensure under this division." (Bus. & Prof. Code, § 26057.) The statute goes on to list specific conditions that may constitute grounds for denial of licensure or renewal. (Ibid, emphasis added.)
>
> Plaintiffs' entire argument backing their "Proxy Practice" allegation rests on their asserted fact that Geraci and Razuki were ineligible to own a cannabis license or CUP due to previously being sanctioned for unlicensed commercial cannabis activities. What Plaintiffs' do not mention is that although this type of sanction could be grounds for denial, section 26057 allows the licensing authority to decide based on all the circumstances. A plain reading of the statute shows there is no one condition that constitutes an automatic, outright denial. ***The statute gives the licensing authority complete discretion to weigh factors and decide what may constitute grounds for denial***.
>
> Further, it is unclear as to how Austin could be implicated for violation of this statute as it does not apply to her. Section 26057 appears to be guidelines for a licensing authority to follow when reviewing applications for cannabis licenses and CUPs. Austin takes no part in reviewing, approving or denying such applications.

(Motion at 17:24-18:14 (emphasis added).)

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[4] Plaintiffs note that the Motion is full of false statements and misrepresentations to this Court. However, as the Motion is based solely on the false argument that BPC §§ 19323/20657, Plaintiffs do not dispute and confuse from the sole case/motion-dispositive issue.

Thus, Attorney Austin's entire motion rests on the claim that the State's cannabis licensing agency has "complete discretion" to deny cannabis applications. That is blatantly false. And so is Attorney Austin's absurd, self-serving failure to understand that if she helps commit a fraud upon a licensing agency by submitting fraudulent applications that she cannot be held liable because she is not the decision maker as to whether those applications are denied or granted.

IV. LEGAL STANDARD

In *Flatley*, the California Supreme Court held that petitioning activity is not protected by the anti-SLAPP statute if "the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law." *Flatley v. Mauro* (2006) 39 Cal.4th 299, 317.

Whether the Proxy Practice violates BPC §§ 19323/26057 and constitutes illegal petitioning is a question of law. *Wilson v. Brawn of California, Inc.* (2005) 132 Cal.App.4th 549, 554 ("Questions of law, such as statutory interpretation or the application of a statutory standard to undisputed facts, are reviewed de novo."); *see Jackson v. Rogers & Wells* (1989) 210 Cal.App.3d 336, 349-350 ("Whether a contract is illegal or contrary to public policy is a question of law to be determined from the circumstances of each particular case."); *Ghirardo v. Antonioli* (1994) 8 Cal. 4th 791, 799 ("When the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court."); *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 603 ("On a pure question of law, trial courts have no discretion. They must, without choice, apply the law correctly.").)

For purposes of illegality, the "law" includes statutes, local ordinances, and administrative regulations issued pursuant to the same. *Kashani v. Tsann Kuen China Enterprise Co.* (2004) 118 Cal.App.4th 531, 542.

V. ARGUMENT

A. The anti-SLAPP statute does not apply because ALG's Proxy Practice is illegal as a matter of law.

1. ***The plain language of the "shall deny" language of BPC §§ 19323/26057 bars the ownership by Geraci and Razuki of cannabis businesses because they were not disclosed in the applications and they were sanctioned for unlicensed commercial cannabis activities.***

"The fundamental task of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." *People v. Cruz* (1996) 13 Cal.4th 764, 774-775 (*Cruz*) (quotation omitted). In determining legislative intent, the court turns first to the words themselves for the answer. *Id.* The words of a statute should be accorded their usual, ordinary, and commonsense meaning, keeping in mind the purpose for which the statute was adopted. *Bostock v. Clayton County* (2020) ___U.S.___, 140 S. Ct. 1731, 1738–1739.

In *Paterra*, the court found that the use of the words "***shall not***" in the subject statute requiring a hearing prior to entry of a default judgment reflected the Legislature's intent of "absolutely prohibiting" the entry of a default judgment without the required hearing. *Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 536. Identically here, the Legislature's use of the words "***shall deny***" represent an absolute prohibition to the issuance of a license to an applicant that fails to qualify for a State license. The Legislature intended to create a regulatory system that prevented applicants sanctioned for illegal market from owning legal cannabis businesses. (*See* SB 94 at § 1 (d) ("The intent of Proposition 64 and MCRSA was to ensure a comprehensive regulatory system that takes production and sales of cannabis away from an illegal market…").)

The Austin Legal Group's interpretation of BPC §§ 19323/26057 fails for two obvious reasons, the first one requires no legal education or knowledge, just basic common sense. First, even by the Austin Legal Group's own reasoning, the Department of Cannabis Control *must* apply the alleged permissive criteria in the statues to determine whether to approve or deny a license. But how is the Department of Cannabis Control supposed to apply the alleged permissive criteria to Geraci, Razuki and the Austin Legal Group's other clients - to meet the Legislative mandate that it issue "state

licenses only to qualified applicants" - when they are not disclosed? (BPC §§ 19320(a), 26055(a).) They can't. It is impossible. As a matter of common sense and by the Austin Legal Group's own reasoning, the illegality of the Proxy Practice is clear – a regulated license can't be lawfully issued to a party that is not disclosed in the application to the agency charged with issuing the license.

On this ground alone the Court must find that the Austin Legal Group's petitioning activity is illegal – it is a direct factual admission of perpetrating a fraud upon the State and City licensing agencies and defrauding qualified applicants of the limited number of licenses available. (*See* SB 94 at § 1(f) ("… ***licensing authorities must know the identity of those individuals who have a significant financial interest in a licensee, or who can direct its operation***." (emphasis added); Penal Code § 484(a) ("Every person… who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of … real or personal property… is guilty of theft.").)

Second, assuming that somehow the Department of Cannabis Control magically knew that Geraci and Razuki were owners that were not disclosed in the applications for CUPs/licenses, their applications must be denied because of their sanctions. The claim that the sanctions are not an absolute bar is based on the purposeful misrepresentation of the "shall deny" and "may deny" language contained in subsections (a) and (b) of BPC §§ 19323 and 26057. Subsection (a) has always applied to "applicants" that are individual persons, subsection (b) has always applied to "applications" by applicants that are entities. (*See* BPC §§ 19300.5 (defining owner to include entities), 260001(a) (same).) This is made clear by the language in subsection (b) of both statutes that states: "The applicant, or any of ***its*** officers, directors, or owners, has been sanctioned by a licensing authority…"

This is reasonable and in accord with the plain language of the statutes. For example, if an applicant is an entity and one of the owners was a sanctioned party, but the sanctioned party only owned 1% of the entity, the Department of Cannabis Control could decide that such an interest was not material and could choose to grant the application.

This Court must give the "shall deny" language its plain meaning of being an absolute bar to the issuance of licenses to disqualified applicants. *Cruz*, 13 Cal.4th at 774-775; *Paterra*, 64 Cal.App.5th at 536 (Legislature use of "shall not" reflects Legislature's intent of "absolutely prohibiting" contrary act). This Court cannot ignore the "shall deny" language and give the "may deny" language the application that the Austin Legal Group claims, which would lead to an absurd result – sanctioned parties can legally acquire ownership of cannabis businesses without being disclosed to licensing agencies. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247, 259 (courts cannot construe statutes in manner contrary to legislative intent that would lead to absurd result and injustice).

As succinctly stated by the United States Supreme Court: "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. ***Only the written word is the law, and all persons are entitled to its benefit.***" *Bostock v. Clayton Cty.* (2020) ___U.S.___ [140 S.Ct. 1731, 1737] (emphasis added). The "shall deny" language is the law. It is clear and controlling. Thus, "extratextual considerations" – in this case the procedural history of the adjudication of the illegality of the Proxy Practice – are inconsequential.

2. **<u>In construing the "shall deny" language of BPC §§ 19323/26057, the Court should follow the interpretation of Department of Cannabis Control because as the agency charged with its enforcement, its interpretation is entitled to great weight and must be followed unless clearly erroneous.</u>**

When an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts and will be followed if not clearly erroneous. *Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 911. Any potential doubt regarding the Department of Cannabis Control's non-discretionary mandate to deny the applications by Gerach and Razuki are removed by CCR § 5002 requiring the disclosure of the sanctions. (Cal. Code Regs., tit. 16, § 5002(c)(20)(M) (application for State license must include "a detailed description of any administrative orders or civil judgments for… ***sanctions for unlicensed commercial cannabis activity by a licensing authority***…") (emphasis added).

Also, CCR § 5032, which prohibits parties like Berry and Malan working on behalf of, respectively, Geraci and Razuki because Geraci and Razuki are not qualified applicants. (Cal. Code Regs., tit. 16, § 5032(b) ("Licensees shall not conduct commercial cannabis activities on behalf of, at the request of, or pursuant to a contract with any person who is not licensed under the Act.").

The Department of Cannabis Control's interpretation of the statutes requiring the disclosure of sanctions must be followed by this Court because it is not clearly erroneous. Therefore, even assuming that Geraci and Razuki had not been sanctioned, the failure to provide a detailed list of the required sanctions means the subject applications must be denied for (i) failing to provide required information (i.e., their ownership interests) and (ii) because they cannot engage in commercial cannabis activities pursuant to agreements with Berry/Malan. (BPC §§ 19323(a), (b) (3) ("The applicant has failed to provide information required by the licensing authority."); 26057(a), (b)(4) ("Failure to provide information required by the licensing authority."); (Cal. Code Regs., tit. 16, § 5032(b).).

3. The Austin Legal Group's claim is a direct factual admission of violating Penal Code § 115

"Penal Code section 115… makes it a felony to knowingly procure or offer any false or forged instrument for filing in a public office." *People ex rel. Harris v. Aguayo* (2017) 11 Cal.App.5th 1150, 1166.[5] The Austin Legal Group directly admits that the subject applications by Geraci and Razuki contained false statements – their agents' false certifications that they had disclosed all parties with an interest in the proposed properties and CUPs/licenses. Therefore, the Proxy Practice violates Penal Code § 115.

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[5] Penal Code § 115(a) provides: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony."

B. *The* Noerr-Pennington *doctrine does not immunize attorneys from petitioning for illegal activity and Plaintiffs will prevail on their claims.*

"The *Noerr-Pennington* doctrine immunizes legitimate efforts to influence a branch of government from virtually all forms of civil liability." *People ex rel. Harris,* 11 Cal.App.5th 1150 at 1160. However, efforts to influence government that are merely a "sham" are not protected by the *Noerr-Pennington* doctrine and are subject to antitrust liability. *See California Transp. v. Trucking Unlimited* (1972) 404 U.S. 508, 512–513; *Hi-Top Steel Corp. v. Lehrer* (1994) 24 Cal. App. 4th 570, 575 (*Hi-Top Steel*). The sham exception encompasses situations in which persons use the governmental process, as opposed to the outcome of that process, as an anticompetitive weapon. *Columbia v. Omni Outdoor Adver.* (1991) 499 U.S. 365, 380 (*Omni*). The sham exception applies to California tort actions for intentional interference with economic relations. *Hi-Top Steel*, 24 Cal. App. 4th at 581-583; *see Clipper Exxpress v. Rocky Mt. Motor Tariff Bureau* (9th Cir. 1982) 674 F.2d 1252, 1271 ("**There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body**.") (emphasis added).

Litigation constitutes a "sham," thereby losing its immunity under the *Noerr-Pennington* doctrine, if (1) the lawsuit is objectively baseless in the sense that no reasonable litigant could realistically expect success on the merits, and (2) the baseless lawsuit conceals an attempt to interfere directly with the business relationships of a competitor through the use of the governmental process (as opposed to the outcome of that process) as an anticompetitive weapon. *Professional Real Estate Investors v. Columbia Pictures Indus.* (1993) 508 U.S. 49, 60–61 (*PREI*); *see Clipper Exxpress*, 674 F.2d at 1270 ("the Walker Process doctrine… provides antitrust liability for the commission of fraud on administrative agencies, for predatory ends.").

Applying the two-factor test set forth in *PREI,* Austin's petitioning activity in furtherance of the Proxy Practice meets the definition of a sham. *PREI,* 508 U.S. 49, 60–61. First, all litigation based on vindicating or protecting alleged ownership rights by Geraci and Razuki in cannabis businesses is objectively baseless because it is illegal. *See People ex rel. Harris,* 11 Cal.App.5th at 1161 ("Unlawful

actions may not be subject to immunity under the *Noerr-Pennington* doctrine."); *id*. at 1163 ("[F]raud … and recording false documents, among other things, are not protected petitioning activity under *Noerr-Pennington* and its progeny."). No reasonable party, much less an attorney or judge, can believe that Geraci and Razuki can lawfully acquire ownership interests in a regulated CUP/license in violation of BPC §§ 19323/26057.

Second, all litigation based on the Proxy Practice interferes with the business relationship of a competitor. Cannabis CUPs and licenses are highly regulated. Every illegally acquired CUP/license defrauds a qualified applicant. Here, Plaintiffs had ownership rights to the subject CUPs acquired via the Proxy Practice. That the Austin Legal Group continues to argue that their Proxy Practice is not illegal simply demonstrates their *purposeful* and *continued* use of "the governmental process (as opposed to the outcome of that process) as an anticompetitive weapon." *PREI,* 508 U.S. at 60–61; *California Motor*, 404 U.S. at 515 ("First Amendment rights may not be used as the means or the pretext for achieving 'substantive evils' which the legislature has the power to control."). The claims made in the Motion are without any factual or legal justification and are taken in furtherance of the attorney-client conspiracy between the Austin Legal Group and her clients and give rise to antitrust liability. *Clipper Exxpress*, 674 F.2d at 1270 ("There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body."); *id.* at 1272 ("*Walker Process* recognizes that fraudulently supplying information can result in monopolization, and therefore violate the antitrust laws.").

In *Hi-Top Steel*, the plaintiff brought claims of unfair competition and interference with contract and prospective economic advantage based on the defendants' challenge to the plaintiffs' application for a city permit to install an automobile body shredder. *Hi-Top Steel*, 24 Cal. App. 4th at 572-573. The trial court dismissed these claims on the defendants' motion for judgment on the pleadings. The court of appeal reversed, concluding that the plaintiffs' allegations were sufficient to show that the "defendants undertook petitioning activity solely to delay or prevent plaintiffs' entry into the shredded automobile body market through use of 'the governmental process—as opposed to

the outcome of that process—as an anticompetitive weapon.' " *Id*. at 582-583 (quoting *Omni*, 499 US at 380).

The plaintiffs alleged that: (1) the defendants had prosecuted an appeal without regard for its merits, (2) agreed to withdraw the appeal if the plaintiffs agreed not to compete with them in the automobile body shredding business, (3) threatened to impose additional obstacles if the plaintiffs would not agree, while (4) working toward installing their own shredder, indicating that their professed environmental concerns were not genuine. *Id*. at 581-582. These facts, the court found, were a sufficient basis to conclude that plaintiffs "were not concerned with stopping plaintiffs' installation … through governmental action but through the imposition of costs and burdens associated with the governmental process," and, therefore, to state a claim based on the sham exception to *Noerr-Pennington*. *Id.* at 583.

Here, Judge Wohlfeil found that but-for Cotton's alleged interference with the Berry Application, a CUP would have issued at the Property. (Comp. at ¶ 203 (Judge Wohlfeil at trial: "I think, that it's more probable than not that a CUP had been issued and the dispensary opened...").) In other words, what prevented Cotton from acquiring a CUP at the Property – the interference – was Geraci's petitioning activity with the City of San Diego and the filing of *Cotton I* based on the illegal Proxy Practice. The delay caused by the petitioning activity allowed Attorney Austin's other client to acquire a CUP within 1,000 feet of the Property, thereby disqualifying the Property for a CUP.

Based on *Hi-Top Steel*, and on the undisputed facts here and questions of law regarding illegality, this Court must find that the Austin Legal Group's petitioning activity was not to protect lawful ownership rights in cannabis businesses through governmental action. Rather, to through the imposition of costs and burdens associated with the governmental process to extort and make it financially unfeasible for Plaintiffs to protect and vindicate their rights. Therefore, Plaintiffs state a claim based on the sham exception to *Noerr-Pennington*. *Id.* at 583.

1. Plaintiffs are not barred by Civil Code § 1714.10.

The requirement under Section 1714.10 of the Civil Code that a plaintiff obtain an order allowing a pleading that includes a claim against an attorney for civil conspiracy with his or her client does not apply to a cause of action against an attorney if the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain. (Civ. Code § 1714.10(c).) Additionally, Civ. Code § 1714.10(a) bars only actions against an attorney for conspiring with a client arising from "any attempt to contest or compromise a claim or dispute." Here, Attorney Austin's representation of her client is for her petitioning activity with City and State licensing agencies and litigation in furtherance thereof, not an "attempt to contest or compromise a claim or dispute." Therefore, on its face, Civ. Code § 1714.10 does not apply to the Complaint.

Additionally, exceptions to the prefiling requirement apply here. "There are two statutory exceptions to the prefiling requirement of section 1714.10(a). Section 1714.10, subdivision (c) (hereafter section 1714.10(c)), provides that section 1714.10(a) does "not apply to a cause of action against an attorney for a civil conspiracy with his or her client, where (1) the attorney has an independent legal duty to the plaintiff, or (2) the attorney's acts go beyond the performance of a professional duty to serve the client and involve a conspiracy to violate a legal duty in furtherance of the attorney's financial gain." (*Central Concrete Supply Co., Inc. v. Bursak* (2010) 182 Cal.App.4th 1092, 1099.)

Here, Attorney Austin lied to public agencies, the judiciaries, including this Court in the Motion, committed perjury in the *Cotton I* trial, has masterminded a multiyear criminal conspiracy, successfully manipulating the San Diego State Courts to enforce illegal contracts, all for her financial gain via purely criminal petitioning activity, in blatant violation of the law, all originating from the Proxy Practice - submitting false documents to a cannabis licensing agencies to help drug dealers acquire prohibited ownership of legal cannabis businesses. *Clipper Exxpres*, 674 F.2d at 1271 ("***There is no first amendment protection for furnishing with predatory intent false information to an administrative or adjudicatory body***.") (emphasis added).

Finally, if the Court finds that Plaintiffs have failed to plead sufficient facts to show an exception to the prefiling requirement, Plaintiff's should be allowed to amend the complaint to include such because (1) subdivision (a) states the absolute defense only apply where a prefiling order is required, which as previously stated, is not required based on Attorney Austin's petitioning activity; and no expressed provision of the statute precludes the court from granting leave to amend to include such facts.

> A complaint setting forth either exception specified in section 1714.10(c) need not follow the petition requirements of section 1714.10(a). No express provision in section 1714.10(b) or any other subdivision of that statute precludes a trial court from granting a plaintiff leave to amend to demonstrate a valid conspiracy claim against an attorney by alleging either of the statutory exceptions. Further, nothing in the legislative history of section 1714.10(b) suggests that the trial court lacks its normal discretionary authority to grant leave to amend.

Central Concrete Supply Co., Inc. v. Bursak (2010) 182 Cal.App.4th 1092, 1100.

2. <u>The Proxy Practice is a per se violation of the Cartwright Act.</u>

To prevail in an antitrust action under the Cartwright Act, a plaintiff must prove the following: (1) the formation and operation of the conspiracy; (2) illegal acts done pursuant thereto; and (3) damage proximately caused by such acts. *Asahi Kasei Pharma Corp. v. CoTherix, Inc.* (2012) 204 Cal.App.4th 1, 8.

The doctrine of per se illegality holds that some acts are prohibited by the antitrust laws regardless of any asserted justification or alleged reasonableness. *Oakland-Alameda County Builders' Exchange v. F. P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354, 361. These per se illegal practices, because of their pernicious effect on competition and lack of any redeeming virtue, are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use. (*Id.* at 361.)

The Proxy Practice is a per se violation of antitrust laws. It is illegal and intended to deprive competitors - qualified applicants - from acquiring ownership of cannabis businesses.

3. <u>The Proxy Practice violates the Unfair Competition Law.</u>

"The UCL is a law enforcement tool designed to protect consumers and deter and punish wrongdoing." *People ex rel. Harris*, 11 Cal.App.5th at 1159. It prohibits "unfair competition" that is broadly defined to include any unlawful, unfair or fraudulent business act or practice. BPC § 17200. The "unlawful" practices prohibited by the UCL "are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 531-532; *id.* at 532 (holding "conditional use permits are part of local zoning laws…. a violation of a permit's conditions is also a violation of the zoning law, and is therefore unlawful.").

In *Golden State Seafood, Inc. v. Schloss,* plaintiff filed an action for malicious prosecution and a UCL claim against a defendant attorney and his client. *Golden State Seafood, Inc. v. Schloss* ("*Golden State*") (2020) 53 Cal.App.5th 21, 27. The complaint alleged attorney defendant filed a prior lawsuit against plaintiff on behalf of his client knowing he lacked probable cause to bring and maintain the action. *Id*. Defendant attorney appealed the trial court's denial of his anti-SLAPP motion and a motion for reconsideration of same. *Id.* The Court of Appeal affirmed the denials and in reaching its decision on the UCL claim, the Court held: "Knowingly filing or pursuing unmeritorious legal actions that are not factually or legally tenable, for the purpose of earning income, qualifies as an unfair business practice." *Id*. at 40.

Here, as in *Golden State*, Attorney Austin's paid-for services of petitioning based on the Proxy Practice for her clients is an unfair business practice. Attorney Austin, despite her feigned understanding of the plain language of BPC §§ 19323/26057, is knowingly filing and maintaining legal actions on the grounds that the Proxy Practice is not illegal. The Proxy Practice is indisputably illegal anticompetitive conduct and therefore unmeritorious. Consequently, Attorney Austin's petitioning activity is an unfair business practice, is not subject to an anti-SLAPP motion, is not immunized, and constitute violations of the UCL.

4. Plaintiffs' claims are not barred by the litigation privilege.

As demonstrated above, the Proxy Practice is illegal and all litigation based on it is sham litigation that is not immunized by the litigation privilege. *See PREI,* 508 U.S. at 60–61.

5. Because the Proxy Practice is illegal, Plaintiffs have a valid cause of action for conspiracy.

Attorney Austin's claim that Plaintiffs do not make out a cause of action for conspiracy fails because it is predicated on the false assumption that the Proxy Practice is not illegal. The Proxy Practice is illegal. The Austin Legal Group is therefore jointly liable with its clients and third-party joint-tortfeasors for all damages caused to Plaintiffs because of their illegal petitioning activity.

VI. ATTORNEY FEES AND COSTS

Pursuant to Civ. Cod. Proc. § 425.16(c)(1), "if a court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court ***shall*** award costs and reasonable attorney's fees to a plaintiff prevailing on the motion pursuant to Section 128.5." (Emphasis added.)

Plaintiff's ask that the court make a finding that the special motion to strike is in fact frivolous and award reasonable costs and attorney's fees to Plaintiffs. At least as to Mrs. Sherlock and her children.

VII. LEAVE TO AMEND

Plaintiffs request leave to amend deficiencies in their pleading. At the very least, Plaintiffs need to amend their claims to reflect that they did not have direct ownership interests in the Lemon Grove CUP. Former plaintiff Chris Williams had ownership interests in the Lemon Grove CUP, but Williams withdrew as a plaintiff after the filing of the original complaint in this action when he was called by Attorney Austin and he became fearful for the safety of his family.

VIII. CONCLUSION

The "shall deny" language of BPC §§ 19323/26057 is the law. The Austin's Legal Group's petitioning activity for Geraci, Razuki, and all their clients in furtherance of alleged ownership rights via applications that fail to disclose them to licensing agencies is illegal as a matter of law.

But-for (i) Cotton steadfastly and heroically refusing for years to not be extorted of the Property via the pressures of litigation and adverse rulings and (ii) Razuki and Malan's falling out over ownership of their illegal multi-million dollar cannabis empire they built in the City of San Diego, the Austin Legal Group would not be forced in this litigation to nonsensically attempt to argue that the Proxy Practice is not illegal because somehow the Department of Cannabis Control magically knows that Geraci and Razuki had interests in the applications and "shall deny" means "may deny."

DATED: July 25, 2022

Respectfully submitted,
LAW OFFICE OF ANDREW FLORES

ANDREW FLORES,ESQ
Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
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EXHIBIT 4

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual,

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC. a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 37-2021-00050889-CU-AT-CTL

DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)

[IMAGED FILE]

Date: August 5, 2022
Time: 9:00 a.m.
Dept.: C-75
Judge: Hon. James A. Mangione
Filed: December 3, 2021
Trial: Not Set

Defendants GINA M. AUSTIN and AUSTIN LEGAL GROUP (collectively, "Austin" or "Defendants"), hereby submit the following reply to Plaintiffs AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., and ANDREW FLORES' (collectively, "Plaintiffs") opposition to Defendants' Special Motion to Strike Plaintiffs' First Amended Complaint pursuant to Code of Civil Procedure section 425.16 (the "anti-SLAPP statute").

I.

INTRODUCTION

Defendants have satisfied their burden under the first prong of the anti-SLAPP statute—Plaintiffs' claims all arise out of Austin acting within her scope as an attorney and petitioning for condition use permits ("CUPs") on behalf of her clients. Such petitioning conduct is explicitly protected by section 425.16. Accordingly, the burden shifts to Plaintiffs. In order to survive Defendants' special motion to strike, Plaintiffs were required to present admissible evidence sufficient to establish a reasonable probability of success on each element of every claim.

Notwithstanding the fact that Plaintiffs served an unsigned opposition, which can and should be disregarded on that basis alone,[1] Plaintiffs failed to meet their burden as to every claim alleged against Defendants. Plaintiffs' Opposition does not provide a single piece of evidence and does not discuss a single element for any of their claims. Given Plaintiffs complete failure to provide any evidence, Defendants' anti-SLAPP motion must be granted.

II.

ARGUMENT

A. Under The First Prong of the Anti-SLAPP Analysis, Austin has Established that Plaintiffs' Claims Arise from Activity Protected by the Anti-SLAPP Statute

The protected activities described in subdivision (e)(1) of Code of Civil Procedure section

[1] Code of Civil Procedure section 446 requires that "[e]very pleading shall be subscribed by the party or his or her attorney." Code of Civil Procedure section 128.7 likewise requires that "[e]very pleading, petition, written notice of motion, or other similar paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party." The Section further provides that **"[a]n unsigned paper shall be stricken..."** The opposition served by Plaintiffs was unsigned and, by Code, should be stricken.

425.16 include statements or writings "made before a legislative, executive, or judicial proceedings, or any other official proceeding authorized by law." These protected activities include petitioning administrative agencies. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115 ["[t]he constitutional right to petition . . . includes . . . seeking administrative action"].)

The core injury-producing conduct underlying Plaintiffs' claims against Austin is her efforts to assist her clients in the administrative process of seeking CUPs. As such, Plaintiffs' claims are based on petitioning activity, namely, acting within her scope as an attorney and filing applications with the local zoning authority on behalf of her clients. (Code Civ. Proc., § 425.16, subd. (e)(1).) "A defendant's burden on the first prong is not an onerous one." (*Optional Capital, Inc. v. Akin Gump Strauss, Hauer & Feld LLP* (2017) 18 Cal.App.5th 95, 112.) All that is required is for Defendants to "identify allegations of protected activity." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.) Defendants have clearly met this low bar.

Plaintiffs do not dispute that Austin engaged in petitioning activity on behalf of her clients. Rather, Plaintiffs' entire opposition is based on an incorrect and unsupported assertion that Austin's petitioning activities were "illegal." As discussed below, Plaintiffs baseless assertion of illegality is insufficient to survive anti-SLAPP scrutiny.

B. The Exception for Illegal Conduct Does Not Apply

Relying on *Flatley v. Mauro* (2006) 39 Cal. 4th 299, 324-328 (*Flatley*), Plaintiffs argue that Austin's petitioning activities are not protected under Code of Civil Procedure section 425.16 because they are "illegal as a matter of law." [Opposition, Section A, 13-16]. First and foremost, Plaintiffs mischaracterized the holding in *Flatley*. Secondly, Plaintiffs failed to present <u>any</u> evidence, let alone sufficient evidence, to conclusively establish that Austin's petitioning activity was illegal as a matter of law.

Our Supreme Court has emphasized that section 425.16's exception for illegal activity is very narrow and applies only in cases where the illegality is undisputed. (*Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478.) Conduct that would otherwise come within the scope of the anti-SLAPP statute does not lose its coverage simply because it is alleged to have been unlawful

or unethical. (*Flatley, supra,* 39 Cal.4th at p. 317.) The asserted protected activity loses protection **only if** it is established through a defendant's concession or by uncontroverted and conclusive evidence that the conduct was illegal as a matter of law. (*Collier v. Harris* (2015) 240 Cal.App.4th 41, 55.) The mere fact the plaintiff alleges the defendant engaged in unlawful conduct does not cause the conduct to lose its protection under the anti-SLAPP statute. (*Birkner v. Lam* (2007) 156 Cal.App.4th 275, 285.) Conversely, in meeting the initial burden, the defendant need not show as a matter of law that his or her conduct was legal. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 286.) Thus, if a plaintiff claims that the defendants conduct is illegal and thus not protected activity, the plaintiff bears the burden of conclusively proving the illegal conduct, with admissible evidence.

Here, Austin does not concede that she engaged in any unlawful activities. Nor is there any uncontroverted evidence that her petitioning activities were unlawful as a matter of law. Plaintiffs' mere allegations that Austin engaged in unlawful activities is insufficient to render her petitioning activity unlawful as a matter of law and outside the protection of Code of Civil Procedure section 425.16.

C. Rare Cases Where the Exception for Illegal Conduct Has Been Applied

1. *Flatley v. Mauro*

In contrast to Plaintiffs' claims, *Flatley* involved claims based on activities that were indisputably unlawful as a matter of law and therefore unprotected under the anti-SLAPP statute. The plaintiff in *Flatley* sued an attorney for civil extortion and related causes of action based on the attorney's alleged criminal attempt to extort money from the plaintiff by threatening to publicize the plaintiff's alleged rape of the attorney's client—unless the plaintiff paid the attorney and his client a seven-figure settlement. (*Flatley, supra,* 39 Cal.4th at pp. 305-311.) In opposing the attorney's anti-SLAPP motion, the plaintiff adduced uncontroverted evidence that the attorney had engaged in the alleged extortion attempt. (*Id*. at pp. 328-329 ["[the attorney] did not deny that he sent the letter, nor did he contest the version of the telephone calls set forth in [the plaintiff's attorneys'] declarations …."].) Based on the uncontroverted evidence that the attorney attempted to extort money from the plaintiff, the court in *Flatley* concluded that the attorney made the

extortion attempt, which was "illegal as a matter of law," and therefore not a protected form of speech under Code of Civil Procedure section 425.16. (*Id*. at pp. 317-320.) The *Flatley* court emphasized, however, that its conclusion that the defendant's conduct "constituted criminal extortion as a matter of law [was] based on the specific and extreme circumstances of this case." (*Id.* at p. 332, fn. 16.)

2. *Paul for Council v. Hanyecz*

As another example of unprotected illegal conduct, the *Flatley* court cited *Paul for Council v. Hanyecz* (2001) 85 Cal.App.4th 1356 (*Paul*), disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5. In *Paul*, the complaint alleged that the defendants interfered with the plaintiff's candidacy by making illegal campaign contributions to an opponent. The defendants moved to dismiss under the anti-SLAPP statute. (*Paul, supra,* at pp. 1361–1362.) However, the defendants' own moving papers effectively conceded that their laundered campaign contributions violated the law. Thus, the court concluded as a matter of law that the defendant could not show that their money laundering conduct was constitutionally protected even though it was undertaken in connection with making political contributions. (*Id.* at p. 1365.) As in *Flatley*, the *Paul* court emphasized the narrow circumstances in which a defendant's assertedly protected activity could be found to be illegal as a matter of law:

> In order to avoid any misunderstanding as to the basis for our conclusions, we should make one further point. This case, as we have emphasized, involves a factual context in which defendants have effectively conceded the illegal nature of their election campaign finance activities for which they claim constitutional protection. Thus, there was *no dispute* on the point and we have concluded, as a matter of law, that such activities are *not* a valid exercise of constitutional rights as contemplated by section 425.16. However, had there been a factual dispute as to the legality of defendants' actions, then we could not so easily have disposed of defendants' motion.

(*Paul, supra,* 85 Cal.App.4th at p. 1367, first italics added; accord, *Flatley, supra,* 39 Cal.4th at p. 317.)

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D. Under the Second Prong of the Anti-SLAPP Analysis, Plaintiffs Have Not Even Attempted to Establish a Probability of Prevailing on Their Claims

To survive an anti-SLAPP motion, Plaintiffs must present admissible evidence on each element of every claim. Plaintiffs make no meaningful attempt to address any of the elements of their claims and more importantly, Plaintiffs' Opposition presents no evidence.

Section 425.16 is clear – once a moving defendant shows that the statute applies, the burden shift to the plaintiff to demonstrate a probability of prevailing on their claims. (Code Civ. Proc., § 425.16, subd. (b)(1).) If a "factual dispute exists about the legitimacy of the defendant's conduct, it cannot be resolved within the first step [of the anti-SLAPP analysis] but must be raised by the plaintiff in connection with the plaintiff's burden to show a probability of prevailing on the merits." (*Flatley, supra,* 39 Cal.4th at p. 316.) The showing required to establish conduct illegal as matter of law is not the same showing as the plaintiff's second prong showing of probability of prevailing. (*Id*. at p. 320.)

Glaringly missing from Plaintiffs' Opposition is any discussion of the elements for their asserted claims. There is likewise **no** evidence offered, thus making it impossible for Plaintiffs to meet their burden under the second prong. Additionally, it appears Plaintiffs have conflated their burden under the second prong with the burden required to establish conduct illegal as a matter of law. Establishing conduct illegal as a matter of law (if applicable) is a complete and separate burden in and of itself. This type of showing cannot stand in place of the burden required under the second prong to show a probability of prevailing. Plaintiffs' failure to present any evidence independently requires that Defendants' motion be granted.

D. Section 426.15 Makes No Provision for Amending the Complaint

Section 425.16 makes no provision for amending the complaint. (*Simmons v. Allstate Ins. Co.* (2001) 92 Cal.App.4th 1068, 1073.) Decisional law makes it very clear that a plaintiff cannot amend his or her complaint to try and escape an anti-SLAPP motion. (See *Contreras v. Dowling* (2016) 5 Cal.App.5th 394, 411 ["'[a] plaintiff … may not seek to subvert or avoid a ruling on an anti-SLAPP motion by amending the challenged complaint … in response to the motion'"]; accord, *ARP Pharmacy Services, Inc. v. Gallagher Bassett Services, Inc*. (2006) 138 Cal.App.4th

1307, 1323 [plaintiff cannot amend pleading to avoid pending anti-SLAPP motion]; *Navellier v. Sletten* (2003) 106 Cal.App.4th 763, 772 [plaintiff cannot use an "eleventh-hour amendment" to plead around anti-SLAPP motion]; see *Simmons, supra,* at p. 1073 ["we reject the notion that such a right should be implied"].)

Plaintiffs have failed to show a reasonable probability of prevailing as to any of the causes of action at issue. It would not only be futile to permit Plaintiffs to amend, but it would also completely undermine the statue by providing a ready escape from section 425.16's quick dismissal remedy. (*Simmons, supra,* 92 Cal.App.4th at p. 1073.) Thus, the Court should deny Plaintiffs' improper request for leave to amend.

III.

CONCLUSION

As set forth above, and in the moving papers, Plaintiffs First Amended Complaint alleges claims against Defendants based on petitioning activity. Such conduct is protected under section 425.16, which requires Plaintiffs to affirmatively demonstrate a probability of prevailing based on admissible evidence. However, Plaintiffs Opposition provides no evidence and falls far from meeting the burden imposed under the second prong of the anti-SLAPP statute. For these reasons, Defendants' special motion to strike must be granted.

PETTIT KOHN INGRASSIA LUTZ & DOLIN PC

Dated: July 29, 2022

By: _____

Douglas A. Pettit, Esq.
Matthew C. Smith, Esq.
Kayla R. Sealey, Esq.
Attorneys for Defendants
GINA M. AUSTIN and
AUSTIN LEGAL GROUP

PROOF OF SERVICE
Amy Sherlock, et al. v. Gina M. Austin, et al.
San Diego Superior Court Case No. 37-2011-00051643-CU-PO-NC

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years and am not a party to the action. I am employed in the County of San Diego, California, and my business address is 11622 El Camino Real, Suite 300, San Diego, California 92130.

On **July 29, 2022**, I caused to be served the following documents:

- **DEFENDANTS GINA M. AUSTIN AND AUSTIN LEGAL GROUP'S REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO STRIKE PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 425.16 (ANTI-SLAPP STATUTE)**

[X] **BY MAIL:** By placing a copy thereof for delivery in a separate envelope addressed to each addressee, respectively, as follows:

[ ] BY FIRST-CLASS MAIL (Code Civ. Proc. §§ 1013(a)-(b))
[X] BY OVERNIGHT DELIVERY (Code Civ. Proc. §§ 1013(c)-(d))
[ ] BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED (Code Civ. Proc. §§ 1013(a)-(b))

[ ] BY ELECTRONIC SERVICE (California Rule of Court 2.251): By submitting an electronic version of the document(s) via file transfer protocol (FTP) to OneLegal Online Court Services through the upload feature at www.onelegal.com.

[ ] BY PERSONAL SERVICE: I caused the above-described document to be personally served on the parties listed on the service list below at their designated business addresses **pursuant to Code Civ. Proc. §1011**.

Andrew Flores, Esq. Law Office of Andrew Flores 427 C Street, Suite 210 San Diego, CA 92101 Tel: (619) 356-1556 Fax: (619) 274-8053 Email: Andrew@FloresLegal.Pro **Plaintiff in *Propria Persona*** **and Attorney for Plaintiffs** **Amy Sherlock, Minors T.S.** **and S.S.**	James D. Crosby, Esq. Attorney at Law 550 West C Street, Suite 620 San Diego, CA 92101 Tel: (619) 450-4149 Email: crosby@crosbyattorney.com **Attorney for Defendants** **LARRY GERACI and REBECCA BERRY**
Scott H. Toothacre, Esq. Michael R. Weinstein, Esq. FERRIS & BRITTON 501 West Broadway, Suite 1450 San Diego, CA 92101 Tel: (619) 233-3131 Email: stoothacre@ferrisbritton.com mweirstein@ferrisbritton.com **Attorney for Defendants** **LARRY GERACI and REBECCA BERRY**	Steven W. Blake, Esq. Andrew E. Hall, Esq. BLAKE LAW FIRM 533 2nd Street, Suite 250 Encinitas, CA 92024 Tel: (858) 232-1290 Email: steve@blakelawca.com Email: andrew@blakelawca.com **Attorney for Defendant** **STEPHEN LAKE**

Natalie T. Nguyen, Esq. NGUYEN LAW CORPORATION 2260 Avenida de la Playa La Jolla, CA 92037 Tel: (858) 757-8577 Email: natalie@nguyenlawcorp.com **Defendant NATALIE TRANG-MY NGUYEN *PRO SE***	

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 29, 2022**, at San Diego, California.

Luis Zamora

EXHIBIT 5

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/12/2022 TIME: 09:00:00 AM DEPT: C-75

JUDICIAL OFFICER PRESIDING: James A Mangione
CLERK: Richard Day
REPORTER/ERM: Darla Kmety CSR# 12956
BAILIFF/COURT ATTENDANT: Dan Bumbar

CASE NO: **37-2021-00050889-CU-AT-CTL** CASE INIT.DATE: 12/03/2021
CASE TITLE: **Sherlock vs Austin [EFILE]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Antitrust/Trade Regulation

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EVENT TYPE: SLAPP / SLAPPback Motion Hearing

APPEARANCES
Andrew Flores, counsel, present for Plaintiff(s) via remote video conference.
Matthew Smith, counsel, present for Defendant(s) via remote video conference.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:Defendants Gina Austin and Austin Legal Group's Motion to Strike Plaintiffs' First Amended Complaint Pursuant to Code of Civil Procedure Section 425.16 is granted.

Pursuant to CCP § 425.16, the court must first determine whether the moving party has made a threshold showing that the challenged cause of action is one arising from protected activity, i.e., the act underlying petitioner's cause of action fits one of the categories delineated in CCP §425.16(e). (CCP §425.16 (b)(1); *Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) Defendants bear the initial burden of establishing a prima facie showing that the Plaintiffs' cause of action *arises* from the Defendants' petition activity. (*Equilon Enterprises, L.L.C. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 61.) Here, Defendants allege that the conduct complained of by Plaintiffs falls within CCP § 425.16(e)(1), which protects "any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law."

If the court finds that Defendants have satisfied the first prong, it must then determine whether the opposing party has demonstrated a probability of prevailing on the claim. (*Ibid*.) "Only a cause of action that satisfies both prongs of the anti-SLAPP statute – i.e., that arises from protected speech or petitioning and lacks even minimal merit – is a SLAPP, subject to being stricken under the statute." (*Thomas v. Quintero* (2005) 126 Cal.App.4th 635, 645.) "[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence." (*Hailstone v. Martinez* (2008) 169 Cal.App.4th 728, 735.)

First Prong
Defendants have shown that the activities alleged in the FAC constitute petitioning "before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law" under CCP §425.16(e)(1). Furthermore, Defendants' actions are not illegal as a matter of law. (*See Zucchet v. Galardi* (2014) 229 Cal.App.4th 1466, 1478 (illegality exception applies "only in '*rare cases* in which there is uncontroverted and uncontested evidence that establishes the crime as a matter of law.'").) Therefore, the first prong is satisfied.

Second prong
Plaintiffs have not submitted any evidence, affidavits, declarations, or requests for judicial notice in support of this motion. Therefore, they cannot show a probability of prevailing on the merits with "competent, admissible evidence." (*Hailstone*, 169 Cal.App.4th at 735.) The second prong of the analysis is not met.

The Court denies Plaintiffs' request to amend the FAC. (*See Dickinson v. Cosby* (2017) 17 Cal.App.5th 655, 676 ("There is no such thing as granting an anti-SLAPP motion with leave to amend.).)

If Defendants seek to recover attorney's fees, it must be filed as a separate motion.

The minute order is the order of the Court.

Defendants are directed to serve notice on all parties within five (5) court days.

James A. Mangione

Judge James A Mangione

EXHIBIT 6

APP-002

ATTORNEY OR PARTY WITHOUT ATTORNEY	STATE BAR NO. 272958	FOR COURT USE ONLY
NAME: Andrew Flores FIRM NAME: Law Office of Andrew Flores STREET ADDRESS: 427 C Street, Suite 220 CITY: San Diego STATE: CA ZIP CODE: 92101 TELEPHONE NO.: 619.356.1556 FAX NO: 619.274.8053 E-MAIL ADDRESS: andrew@floreslegal.pro ATTORNEY FOR (name): Amy Sherlock, minors T.S. and S.S., and Andrew Flores (pro se)		FILED Clerk of the Superior Court SEP -1 2022 By: A. Santiago, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego 92101 BRANCH NAME: Hall of Justice		
PLAINTIFF/PETITIONER: Amy Sherlock, minors T.S. and S.S., and Andrew Flores DEFENDANT/RESPONDENT: Gina M. Austin and Austin Legal Group		
[X] NOTICE OF APPEAL [ ] CROSS-APPEAL (UNLIMITED CIVIL CASE)		CASE NUMBER 37-2021-00050889-CU-AT-CTL

Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal. A copy of this form must also be served on the other party or parties to this appeal. You may use an applicable Judicial Council form (such as APP-009 or APP-009E) for the proof of service. When this document has been completed and a copy served, the original may then be filed with the court with proof of service.

1. NOTICE IS HEREBY GIVEN that (name): Amy Sherlock, minors T.S. and S.S., and Andrew Flores appeals from the following judgment or order in this case, which was entered on *(date)*: 8/12/2022
   - [ ] Judgment after jury trial
   - [ ] Judgment after court trial
   - [ ] Default judgment
   - [ ] Judgment after an order granting a summary judgment motion
   - [ ] Judgment of dismissal under Code of Civil Procedure, §§ 581d, 583.250, 583.360, or 583.430
   - [ ] Judgment of dismissal after an order sustaining a demurrer
   - [ ] An order after judgment under Code of Civil Procedure, § 904.1(a)(2)
   - [x] An order or judgment under Code of Civil Procedure, § 904.1(a)(3)–(13)
   - [ ] Other *(describe and specify code section that authorizes this appeal):*

2. For cross-appeals only:
   a. Date notice of appeal was filed in original appeal:
   b. Date superior court clerk mailed notice of original appeal:
   c. Court of Appeal case number *(if known)*:

Date: 8/16/2022

Andrew Flores
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Form Approved for Optional Use
Judicial Council of California
APP-002 [Rev. January 1, 2017]

NOTICE OF APPEAL/CROSS-APPEAL (UNLIMITED CIVIL CASE)
(Appellate)

Cal. Rules of Court, rule 8.100
www.courts.ca.gov

ANDREW FLORES, ESQ (SBN:272958)
LAW OFFICE OF ANDREW FLORES
427 C Street, Suite 220
San Diego CA, 92101
P:619.356.1556
F:619.274.8053
Andrew@FloresLegal.Pro

Plaintiff *in Propria Persona*
and Attorney for Plaintiffs
Amy Sherlock, Minors T.S.
and S.S.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – CENTRAL DIVISION

AMY SHERLOCK, an individual and on behalf of her minor children, T.S. and S.S., ANDREW FLORES, an individual;

Plaintiffs,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGALGROUP, a professional corporation, LARRY GERACI, an individual, REBECCA BERRY, an individual; JESSICA MCELFRESH, an individual; SALAM RAZUKI, an individual; NINUS MALAN, an individual; FINCH, THORTON, AND BARID, a limited liability partnership; ABHAY SCHWEITZER, an individual and dba TECHNE; JAMES (AKA JIM) BARTELL, an individual; NATALIE TRANG-MY NGUYEN, an individual, AARON MAGAGNA, an individual; BRADFORD HARCOURT, an individual; SHAWN MILLER, an individual; LOGAN STELLMACHER, an individual; EULENTHIAS DUANE ALEXANDER, an individual; STEPHEN LAKE, an individual, ALLIED SPECTRUM, INC., a California corporation, PRODIGIOUS COLLECTIVES, LLC, a limited liability company, and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2021-00050889-CU-AT-CTL

PROOF OF SERVICE RE: NOTICE OF APPEAL OF RULING 8/12/2022

FILED
Clerk of the Superior Court

SEP -1 2022

By: A. Santiago, Deputy

PROOF OF SERVICE

I, the undersigned, declare that:

I am and was at the time of service of the papers herein, over the age of eighteen (18) years. I am employed in the County of San Diego, California and my business address is 427 C Street, Suite 220, San Diego CA 92101

.

1. NOTICE OF APPEAL OF RULING ON 8/12/22

[ ] MAIL – by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail at San Diego, California.

[ ] PERSONAL DELIVERY – by personally delivery the documents listed above to the person(s) at the address set forth below.

[x] **BY ELECTRONIC DELIVERY (Code Civ. Proc. § 1010.6 and Cal. Rules of Court, rule 2.251):** Based on an agreement between the parties to accept service by e-mail or electronic transmission, I caused such document(s) to be electronically served to those parties listed below from e-mail address andrew@floreslegal.pro. The file transmission was reported as complete and a copy of the Service Receipt will be maintained with the original document(s) in our office.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at San Diego, California, in the ordinary course of business. I am aware that service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

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///
///

James D. Crosby, Esq.
Attorney at Law

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Email: natalie@nguyenlawcorp.com
Defendant NATALIE TRANG-MY NGUYEN PRO SE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 23, 2022, at San Diego, California.

ANDREW FLORES
ATTORNEY FOR PLAINTIFF'S

Proof of Service

PROOF OF ELECTRONIC SERVICE (Court of Appeal)	
Notice: This form may be used to provide proof that a document has been served in a proceeding in the Court of Appeal. Please read *Information Sheet for Proof of Service (Court of Appeal)* (form APP-009-INFO) before completing this form.	
Case Name: Sherlock v. Austin Court of Appeal Case Number: D081109 Superior Court Case Number: 37-2021-0050889-CU-AT-CTL	

1. At the time of service I was at least 18 years of age.
2. a. My ☐ residence ☒ business address is *(specify)*:
   427 C Street, Suite 220, San Diego CA 92101
   b. My electronic service address is *(specify)*: afloreslaw@gmail.com
3. I electronically served the following documents *(exact titles)*:
   Certificate of Interested Parties, Appellant's Opening Brief, Request for Judicial Notice
   Appellant's Appendix Vol. 1.
4. I electronically served the documents listed in 3. as follows:
   a. Name of person served: Doulass Pettit
      On behalf of *(name or names of parties represented, if person served is an attorney)*:
      Gina Austin and Austin Legal Group
   b. Electronic service address of person served: dpettit@pettitkohn.com
   c. On *(date)*: 1/11/2023

☐ The documents listed in 3. were served electronically on the persons and in the manner described in an attachment *(write "APP-009E, Item 4" at the top of the page)*.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 1/11/2023

Andrew Flores
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)